



Empowering wildlife professionals to advance conservation through science, community, and professional excellence

**Comments on the U.S. Fish and Wildlife Service Endangered and Threatened Species: Endangered and Threatened Wildlife and Plants
[FWS–HQ–ES–2025–0029]**

22 December 2025

The Wildlife Society is concerned that a 30-day comment period did not provide sufficient time for meaningful engagement. While we offer the following comments to assist the agency, additional time would have enabled a more thorough and scientifically robust review with broader expert and practitioner engagement.

The Wildlife Society (TWS) respectfully submits the following comments on the U.S. Fish and Wildlife Service’s proposed revisions to regulations implementing Section 4(d) of the Endangered Species Act (ESA), which govern the establishment of protective regulations for species listed as threatened. While not opposed in principle to fully species-specific 4(d) rules:

TWS has concerns that eliminating the long-standing blanket 4(d) rule without sufficient procedural safeguards, timelines, or capacity considerations, will increase implementation challenges for the Service and risk undermining timely protections for threatened species.

As a result, TWS recommends that the Service continue using the blanket 4(d) rule as a default safeguard for threatened species and employ species-specific 4(d) rules to tailor protections when supported by the best available science.

Neither legal precedent nor statutory text compel the proposed rule change

As justification for proposing this rule the Service states that “existing regulations do not match the ‘single, best meaning’ of the statute,” and that the “statutory text, structure, and context make clear that Congress intended for the Service to determine what protections are needed for threatened species on a species-by-species basis.” To support this claim, the Service cites the removal of the Chevron deference in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

However, in *Loper Bright*, the Supreme Court specifically states that they “do not call into question prior cases that relied on the Chevron framework. The holdings of those cases that specific agency actions are lawful...[and] are still subject to statutory stare decisis despite our change in interpretive methodology.”

In this case, the guiding federal court precedent from *Sweet Home Chapter of Communities for a Great Oregon, Etal. v. Bruce Babbitt, Secretary of the Interior*, 1 F.3d 1 (D.C. Cir. 1994) found “it far from clear that [Section 4(d)] requires the FWS to extend protections to threatened species on a species-by-species basis or that it mandates that the agency issue formal findings of necessity to support each such extension.”

As a result, the Service’s claim that legal precedent compels the present rule change and that the statutory text is clear are both unfounded and potentially destabilizing to the foundation of threatened species conservation. Rather than seek durable statutory changes through the legislature or further judicial interpretation from courts post-Chevron, the Service is assuming judicial authority using a distorted legal basis for their interpretation. As clearly articulated in *Loper Bright*, “courts [not agencies] use every tool at their disposal to determine the best reading of the statute and resolve the ambiguity.”

If the Service feels there is ambiguity in ESA, then Congress should be consulted prior to making unilateral changes to the law’s established implementation framework and introducing uncertainty into the conservation of threatened species.

The blanket rule provides regulatory certainty and conservation continuity while enabling the Service to tailor protections where appropriate and where science and capacity allow

The blanket 4(d) rule has long served as a practical mechanism to ensure that threatened species receive immediate baseline protections upon listing. As TWS noted in its 2018 comments on the then-proposed removal of the blanket rule¹, the blanket rule provides regulatory certainty and conservation continuity while allowing the Service time to tailor protections where appropriate.

Eliminating the blanket rule shifts the regulatory framework toward exclusive reliance on species-specific rules. While such tailoring can be beneficial in some cases, it also introduces the risk of protection gaps if species-specific rules are delayed or incomplete. These risks are particularly acute for species facing ongoing habitat loss, exploitation, or other acute threats at the time of listing.

Further, the Service states that it intends “to finalize species-specific rules concurrent with the final listing or reclassification determination.” However, TWS has concerns about the celerity of such an approach. Species-specific rules often result from Section 7 and Section 10 consultations and reviews completed in coordination with other federal agencies. Mandating completion of these rules concurrent with final listing decisions would restrict the means by which Service employees can evaluate how other federal actions will impact threatened species. This may result in incomplete 4(d) rules which will need to be revisited as new information is obtained through consultations.

Lastly, TWS must emphasize that developing, justifying, and implementing species-specific 4(d) rules is resource-intensive. This approach significantly increases analytical, legal, and administrative workload at

¹ 2018 comments

a time when Ecological Services staffing and funding have been greatly reduced. Absent a realistic assessment of capacity, a species-specific framework risks slowing listings, delaying protections, and producing inconsistent rules. Regulatory design must account for the practical realities of implementation.

Conclusion

To draw from TWS' longstanding [issue statement on the U.S. Endangered Species Act](#), "identifying rare and declining species before their populations reach critically low levels allows the implementation of more ecologically, socially, and economically viable conservation options." The proactive protections provided through the blanket rule ensure an efficient and consistent interpretation of ESA that ensures threatened species protections remain timely, scientifically grounded, and feasible to implement. Until legislative changes are implemented or judicial interpretation changes, we urge the Service to continue using the blanket 4(d) rule as a default safeguard for threatened species and employ species-specific 4(d) rules to tailor protections when supported by the best available science.

Thank you for the opportunity to comment on proposed revisions to Section 4(d) regulations.



Empowering wildlife professionals to advance conservation through science, community, and professional excellence

Comments on the U.S. Fish and Wildlife Service and National Marine Fisheries Service Endangered and Threatened Species: Listing Endangered and Threatened Species and Designating Critical Habitat [FWS-HQ-ES-2025-0039]

22 December 2025

The Wildlife Society is concerned that a 30-day comment period did not provide sufficient time for meaningful engagement. While we offer the following comments to assist the agency, additional time would have enabled a more thorough and scientifically robust review with broader expert and practitioner engagement.

The Wildlife Society (TWS) appreciates the opportunity to comment on the proposed revisions to regulations implementing Section 4 of the Endangered Species Act (ESA), including provisions governing listing, delisting, reclassification, and the designation of critical habitat. TWS represents wildlife scientists and managers dedicated to advancing science-based conservation, including the effective implementation of the ESA. We offer a practitioner-informed perspective to the Services on the proposed rulemaking.

While TWS is not categorically opposed to revisiting regulatory definitions, we are concerned about how these changes—particularly when combined with recent judicial developments and reduced agency capacity—may affect scientific rigor, regulatory stability and conservation outcomes associated with the ESA.

Specifically, TWS recommends that the Services:

- Retain clear regulatory language affirming that listing, delisting and reclassification decisions are based solely on the best scientific and commercial data available, without reference to economic or other non-biological considerations, consistent with ESA Section 4(a)(1).
- Ensure the definition of “foreseeable future” explicitly accommodates long-term ecological and climate projections, recognizing that species declines and recovery processes often operate over decades.
- Maintain recovery as an explicit consideration in delisting determinations, to avoid premature delisting and increased risk of future relisting.

- Preserve the recovery function of critical habitat designation, including robust consideration of both occupied and unoccupied habitat necessary for long-term viability, climate adaptation, and range connectivity.
- Apply a narrow, science-based interpretation of “prudence” determinations to ensure critical habitat is designated to the maximum extent prudent and determinable, as directed by the ESA.
- Evaluate the feasibility of proposed regulatory changes in light of current agency capacity, including staffing and funding constraints within Ecological Services, to avoid delays, inconsistency, or uneven implementation.
- Work with Congress to provide durable legislative clarification, rather than relying on successive regulatory reinterpretation.

Listing Decisions and Economic Considerations

TWS reiterates its longstanding position¹ that ESA listing determinations must be made **solely on the basis of the best scientific and commercial data available**, as required by Section 4(a)(1) of the Act. As we emphasized in our 2018 comments on ESA regulatory revisions², removing explicit regulatory language stating that listing decisions are made “without reference to possible economic or other impacts” introduces unnecessary ambiguity and increases the risk that economic or political considerations could influence decisions that Congress intended to be science-driven.

While TWS recognizes that economic information may be relevant elsewhere in ESA implementation, we strongly urge the Services to retain clear regulatory language affirming that economic considerations play **no role** in listing, delisting, or reclassification determinations.

Foreseeable Future and the Use of Long-Term Science

TWS remains concerned that the proposed definition of “foreseeable future” may constrain the Services’ ability to rely on long-term climate, habitat and demographic projections. As we noted in 2018, species declines and recovery processes often unfold over decades, particularly for long-lived or wide-ranging species.

We urge the Services to ensure that the definition of foreseeable future explicitly accommodates the use of scientifically credible long-term models, including climate projections and species distribution analyses, rather than limiting assessments to short-term certainty.

Delisting Standards and Recovery

TWS supports regulatory clarity but recommends that recovery remain an explicit and central element of delisting decisions. Removing recovery from the regulatory framework risks premature delisting before

¹ ESA Issue statement

² 2018 comments

threats are adequately addressed, potentially increasing the likelihood of future relisting and further straining agency capacity.

Critical Habitat Designation

TWS emphasizes that critical habitat designation is not merely a procedural requirement, but a core tool for supporting species recovery. In our 2018 comments, we cautioned against regulatory changes that diminish the recovery function of critical habitat or narrow its scope in ways that are inconsistent with the ESA's conservation purpose.

The proposed revisions raise concerns that critical habitat designation may become more discretionary and more narrowly applied, particularly through changes to how occupied and unoccupied habitat is evaluated and how prudency determinations are made.

Occupied and Unoccupied Habitat

TWS urges the Services to maintain a robust framework for designating both occupied and unoccupied critical habitat where necessary for recovery. Unoccupied habitat is often essential for climate adaptation, range expansion, and long-term viability, especially under rapidly changing environmental conditions. We recommend that the Services clearly articulate how unoccupied habitat will be evaluated and ensure that recovery—not merely current occupancy—remains a central consideration.

Prudency Determinations

The ESA directs that critical habitat be designated to the “maximum extent prudent and determinable.” TWS is concerned that expanding the circumstances under which designation may be deemed “not prudent” risks undermining this statutory directive. We urge the Services to retain a narrow interpretation of prudency that is grounded in conservation science and supported by transparent documentation.

Capacity and Implementation Considerations

Across listing, delisting and critical habitat designation, TWS is concerned that increased discretion and analytical complexity may strain already limited agency resources. Reductions in Ecological Services funding and staffing have affected the Services' ability to complete timely listings, designate critical habitat and update recovery plans.

TWS urges the Services to explicitly consider implementation feasibility when finalizing these regulations and to avoid frameworks that increase workload without corresponding investments in capacity.

The Role of Congress in Addressing Statutory Uncertainty

TWS recognizes that these proposed revisions are being developed in response to evolving judicial standards following *Loper Bright Enterprises v. Raimondo*. However, where statutory ambiguity

exists—particularly regarding the role of economics, recovery standards, and critical habitat designation—TWS urges restraint in resolving these questions through regulation alone.

TWS continues to support the understanding that durable and consistent implementation of foundational environmental statutes is best achieved when Congress clarifies statutory intent. Reliance on repeated regulatory reinterpretation risks continued instability, increased litigation and uncertainty for conservation practitioners.

Conclusion

TWS urges careful consideration of how proposed changes to listing, delisting and critical habitat designation will affect conservation outcomes in practice. We encourage the Services to preserve science-based safeguards, maintain the recovery function of critical habitat and ensure that regulatory frameworks align with agency capacity and long-term stability. TWS looks forward to continued engagement to support effective and enduring implementation of the Endangered Species Act.



Empowering wildlife professionals to advance conservation through science, community, and professional excellence

**Comments on the U.S. Fish and Wildlife Service and National Marine Fisheries Service Endangered and Threatened Species: Interagency Cooperation
[FWS–HQ–ES–2025–0044]**

22 December 2025

The Wildlife Society is concerned that a 30-day comment period did not provide sufficient time for meaningful engagement. While we offer the following comments to assist the agency, additional time would have enabled a more thorough and scientifically robust review with broader expert and practitioner engagement.

The Wildlife Society (TWS) respectfully submits the following comments on the U.S. Fish and Wildlife Service’s and National Marine Fisheries Service’s proposed revisions to regulations implementing Section 7 of the Endangered Species Act (ESA). TWS represents wildlife scientists and managers who routinely engage in Section 7 consultations at both project-specific and programmatic scales and who rely on consultation frameworks that are scientifically robust, transparent and implementable. TWS recognizes the Services’ efforts to clarify consultation standards in light of evolving legal interpretations. However, we are concerned that the proposed revisions, when combined with ongoing capacity constraints and parallel ESA rulemakings, may narrow the scope of consultation in ways that reduce conservation effectiveness and increase uncertainty in implementation.

The Wildlife Society specifically recommends that the Services:

- Retain definitions of “effects of the action” that allow consideration of indirect and cumulative impacts. Species declines are frequently driven by incremental and interacting stressors that cannot be meaningfully assessed through narrow causal analyses.
- Ensure environmental baselines incorporate existing and reasonably foreseeable stressors across a species’ range, including habitat fragmentation and climate trends, to prevent systematic underestimation of risk during consultation.
- Allow consideration of credible, enforceable mitigation measures where they are integral to project design, as categorical exclusion of mitigation may discourage proactive conservation planning and reduce consultation flexibility.

- Avoid overly restrictive causal nexus standards that exclude well-established ecological relationships, which could lead to inconsistent application across regions and undermine conservation effectiveness.
- Align consultation expectations, documentation requirements, and timelines with current agency capacity, recognizing that staffing and funding constraints directly affect consultation quality and consistency.
- Promote regulatory stability by limiting repeated reinterpretation of consultation standards through successive rulemakings, which creates uncertainty for agencies and practitioners alike.
- Where uncertainty persists regarding the scope of Section 7 obligations, seek congressional clarification rather than regulatory contraction, to ensure durable and predictable consultation frameworks.

Effects of the Action

Section 7 consultation depends on a clear and scientifically sound understanding of which impacts are attributable to a federal action. TWS is concerned that restoring narrower definitions of “effects of the action” may limit the Services’ ability to evaluate indirect and cumulative impacts that are well documented in the scientific literature, including downstream habitat degradation, altered disturbance regimes, and climate-related stressors.

Wildlife population declines are rarely driven by a single action in isolation. Consultation frameworks that constrain analysis to proximate or short-term effects risk underestimating the true impacts of federal actions on listed species and their habitats.

Environmental Baseline and Cumulative Conditions

The environmental baseline provides the context against which project effects are evaluated. TWS urges the Services to ensure that baseline definitions reflect landscape-scale conditions and cumulative stressors, including habitat fragmentation, climate trends, and legacy impacts of past actions.

Without a robust baseline, consultations may systematically understate risk, particularly for species already experiencing chronic stress or range contraction.

Mitigation Measures and Project Design

TWS recognizes that not all proposed mitigation measures are equally certain or effective. However, eliminating the ability to consider credible, enforceable mitigation measures may discourage proactive conservation planning and limit the Services’ flexibility in developing biologically sound, reasonable and prudent alternatives.

We recommend allowing mitigation to be considered where it is clearly defined, enforceable, and supported by evidence, rather than excluding it categorically.

Agency Capacity and Statutory Uncertainty

TWS emphasizes that consultation quality is directly tied to agency capacity. Ongoing reductions in Ecological Services staffing and funding have affected the Services' ability to conduct timely, consistent consultations. Regulatory changes that increase analytical complexity or documentation requirements must be evaluated in light of these constraints.

Absent adequate capacity, narrower consultation standards may shift risk rather than reduce it, increasing the likelihood of inconsistent application and litigation.

The Role of Congress in Addressing Statutory Uncertainty

TWS recognizes that these proposed revisions are being developed in response to evolving judicial standards following *Loper Bright Enterprises v. Raimondo*. However, where statutory ambiguity exists, in this case regarding the scope of consultation obligations under Section 7, durable resolution is best achieved through congressional clarification.

Repeated regulatory reinterpretation risks continued instability, undermining both conservation outcomes and the ability of wildlife professionals to plan and implement recovery actions over long time horizons.

Conclusion

TWS urges the Services to ensure that consultation regulations remain scientifically robust, practicable and stable, supporting effective conservation and predictable implementation across agencies and regions. TWS looks forward to continued engagement to support effective and enduring implementation of the Endangered Species Act.



Empowering wildlife professionals to advance conservation through science, community, and professional excellence

Comments on the U.S. Fish and Wildlife Service Endangered and Threatened Species: Regulations for Designating Critical Habitat [FWS–HQ–ES–2025–0048]

22 December 2025

The Wildlife Society is concerned that a 30-day comment period did not provide sufficient time for meaningful engagement. While we offer the following comments to assist the agency, additional time would have enabled a more thorough and scientifically robust review with broader expert and practitioner engagement.

The Wildlife Society (TWS) respectfully submits the following comments on the U.S. Fish and Wildlife Service’s proposed revisions to regulations governing exclusions from critical habitat designation under Section 4(b)(2) of the Endangered Species Act (ESA).

As consistent with [TWS’ Issue Statement on the U.S. Endangered Species Act](#), TWS advocates for “measures to restore, enhance, manage, and protect occupied and unoccupied critical habitats that are essential to recover endangered and threatened species.” While we recognize that the ESA authorizes consideration of economic and other impacts when evaluating critical habitat exclusions, we are concerned that the proposed revisions expand discretion in ways that may undermine recovery objectives, reduce transparency and create inconsistency in implementation.

Specifically, TWS recommends that the Service:

- Apply clear, transparent, and repeatable analytical frameworks when weighing the benefits of critical habitat inclusion versus exclusion.
- Ensure economic considerations do not overshadow conservation benefits in exclusion analyses.
- Avoid excluding habitat essential for recovery, climate adaptation, connectivity, or future range shifts.
- Require evaluation of cumulative impacts resulting from multiple exclusions across a species’ range.
- Document the rationale, scientific basis, and treatment of uncertainty for all exclusion decisions.
- Where recurring statutory uncertainty drives exclusion decisions, seek congressional clarification to promote long-term stability.

Purpose of Critical Habitat in Achieving Species Recovery

Critical habitat is a foundational recovery tool under the ESA. As TWS emphasized in its 2018 comments¹, designation of critical habitat provides a framework for conserving habitat features essential to species survival and recovery, particularly in landscapes subject to ongoing development and climate change.

Exclusion decisions should therefore be evaluated not only in terms of near-term impacts but in the context of long-term recovery, resilience and adaptive capacity.

Transparent Analyses of Economic Considerations

While the ESA allows consideration of economic impacts under Section 4(b)(2), TWS urges the Services to apply this authority cautiously and transparently. Exclusion analyses should clearly document:

- the conservation benefits of inclusion,
- the economic and other impacts of designation, and
- how tradeoffs were evaluated.

Absent standardized analytical frameworks, exclusion decisions risk appearing arbitrary or inconsistent, undermining public trust and conservation effectiveness.

Unoccupied Habitat, Connectivity, and Climate Adaptation

TWS remains concerned that expanded exclusion discretion may disproportionately affect unoccupied habitat. We have previously referenced unoccupied areas as the “currency of recovery,” providing space for range expansion, connectivity, and climate-driven shifts.

Excluding such habitat without a clear scientific justification risks locking species into shrinking ranges and limiting long-term viability.

Cumulative Impacts of Exclusions

TWS recommends that the Services explicitly evaluate the cumulative impacts of multiple exclusions across a species’ range. Evaluating exclusions in isolation may underestimate their combined effect on recovery potential, particularly for wide-ranging or migratory species.

The Role of Congress in Addressing Statutory Uncertainty

Given the repeated regulatory revisions to critical habitat rules across administrations, TWS reiterates that durable clarity is best achieved through congressional action where statutory ambiguity persists. Reliance on successive rulemakings increases uncertainty for wildlife professionals and conservation partners engaged in long-term planning.

¹ 2018 ESA comments

Conclusion

TWS appreciates the opportunity to comment on the proposed revisions to critical habitat exclusion procedures. We urge the Services to apply exclusion authority judiciously, transparently, and in a manner that preserves the ESA's recovery purpose and supports consistent, science-based implementation.

Founded in 1936, The Wildlife Society is an international network of over 11,000 leaders in wildlife science, management and conservation who are dedicated to excellence in wildlife stewardship. The mission of The Wildlife Society is to empower wildlife professionals to advance conservation through science, community, and professional excellence. As a professional scientific and educational organization, The Wildlife Society refrains from advocacy where it cannot ground its views on science.

The Arizona Chapter of The Wildlife Society (AZTWS) was established in 1968 and is dedicated to promoting sound management and conservation of Arizona's wildlife resources. Membership is open to all professionals, students and laypersons interested in wildlife research, management, education, and administration. Our chapter works to maintain communication among wildlife professionals, encourage communication between those professionals and the public, support continuing education through grants, hold workshops and regional meetings, encourage student involvement in the wildlife profession, and actively participate in shaping management and conservation policy through letters, public statements and resolutions.

The U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration (NOAA) have announced four proposed rule changes that will narrow the definitions of critical habitat, alter criteria for listing or delisting a species, and change regulations with regard to Section 7 under the Endangered Species Act (ESA). We, the AZTWS, are committed to ensuring that decisions under the Act remain transparent, grounded in rigorous scientific analysis—including data from states, tribes, and peer-reviewed climate research—and free from economic or political influence. We further advocate for adequate federal funding and staffing to support efficient listing and recovery processes, collaborative conservation actions, and transparent rulemaking that strengthens the protection, restoration, and management of critical habitats essential to the recovery of endangered and threatened species.

The USFWS and NOAA are proposing to remove the "blanket rule" option for protecting newly listed threatened species pursuant to section 4(d) of the Act. The USFWS intends to create species-specific rules for all threatened species currently protected under the "blanket rule" option. Until such species-specific rules are promulgated, threatened species that receive protections under the "blanket rule" option will continue to receive those protections. The purpose of the "blanket rule" is to provide immediate protection, streamline the listing process, and avoid delays in conservation for vulnerable species. Further, the "blanket rule" applies the same strong protections (similar to endangered species) automatically to all newly listed threatened species. Although the USFWS can issue customized rules, keeping the "blanket rule" saves time and resources especially considering the decreased USFWS federal workforce. In other words, the "blanket rule" reduces the burden on USFWS, which has limited funds, by avoiding the need to create unique rules for every species. Lastly, having the option of relying on the "blanket rule" and the option of species-specific customized rules provides the best option for the conservation of species being listed as threatened. AZTWS requests that the interim application of endangered-level protections (§17.31) remains in place until a species-specific rule is finalized or that the USFWS otherwise maintains the application of the blanket 4(d) rule.

Thank you for your considerations to our comments on the USFWS four proposed rule changes.

Regards,

Holly Hicks, President

Arizona Chapter of The Wildlife Society

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Executive Order (E.O.) 14154, "Unleashing American Energy," issued January 20, 2025, directed all departments and agencies to review agency actions that impose an undue burden on the identification, development, or use of domestic energy resources, and, as appropriate and consistent with applicable law, consider suspending, revising, or rescinding agency actions that conflict with this national objective. To administer provisions of E.O. 14154, the Secretary of the Interior subsequently issued Secretary's Order (S.O.) 3418, which directed Assistant Secretaries to take steps, as appropriate, to suspend, revise, or rescind multiple actions that had been finalized under the prior Administration. Allowing more critical habitat exclusions particularly in areas with critical minerals, oil, and gas extraction is not using the best scientific information available. Further, critical habitat designations are not species preserves but instead provide a means for federal agencies to consult with the USFWS on their actions such that there are no adverse modifications to critical habitat.

AZTWS requests a clear, repeatable analytical framework for weighing exclusion impacts, including how "benefits of inclusion" will be scientifically measured. We recommend a prohibition on excluding areas essential for climate adaptation, connectivity, or future occupancy and ask the USFWS to document cumulative conservation impacts of multiple exclusions across a species' range.

Thank you for your considerations to our comments on the USFWS four proposed rule changes.

Regards,

Holly Hicks, President

Arizona Chapter of The Wildlife Society

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As stated above, E.O. 14154, "Unleashing American Energy," issued January 20, 2025, directed all departments and agencies to review agency actions that impose an undue burden on the identification, development, or use of domestic energy resources, and, as appropriate and consistent with applicable law, consider suspending, revising, or rescinding agency actions that conflict with this national objective. Section 7 of the ESA (titled Interagency Cooperation) mandates cooperation between federal agencies and USFWS to ensure federal actions don't harm listed species or their critical habitats, primarily through a consultation process where agencies assess potential "jeopardy" or "adverse modification" and implement conservation measures, making it central to federal project planning and environmental compliance. When federal agencies propose actions that include development of energy resources, and that project may affect listed species, they need to simply conduct a consultation with the USFWS and develop a Biological Opinion. Under these proposed regulatory revisions, offsets would no longer be available to the Services for incorporation into reasonable and prudent measures, and the USFWS would only incorporate avoidance and minimization measures within the action area as part of the reasonable and prudent measures. Consultations under Section 7 of the ESA can be an extremely creative process incorporating conservation measures listed in a Recovery Plan. Wildlife biologists with the USFWS, in cooperation with the Federal action agency, have the best expertise to develop reasonable and prudent measures within Biological Opinions.

AZTWS requests reinstatement of broader, scientifically supported definitions of "effects" that include

indirect and cumulative impacts. We ask the USFWS and NOAA to allow inclusion of mitigation or offsets when supported by clear, reliable evidence, and we recommend requiring climate-driven effects, landscape-scale habitat trends, and cumulative threats be incorporated in all baselines and effects analyses.

Thank you for your considerations to our comments on the USFWS four proposed rule changes.

Regards,

Holly Hicks, President

Arizona Chapter of The Wildlife Society

The Arizona Chapter of The Wildlife Society (AZTWS) was established in 1968 and is dedicated to promoting sound management and conservation of Arizona's wildlife resources. Membership is open to all professionals, students and laypersons interested in wildlife research, management, education, and administration. Our chapter works to maintain communication among wildlife professionals, encourage communication between those professionals and the public, support continuing education through grants, hold workshops and regional meetings, encourage student involvement in the wildlife profession, and actively participate in shaping management and conservation policy through letters, public statements and resolutions.

The U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration (NOAA) have announced four proposed rule changes that will narrow the definitions of critical habitat, alter criteria for listing or delisting a species, and change regulations with regard to Section 7 under the Endangered Species Act (ESA). We, the AZTWS, are committed to ensuring that decisions under the Act remain transparent, grounded in rigorous scientific analysis—including data from states, tribes, and peer-reviewed climate research—and free from economic or political influence. We further advocate for adequate federal funding and staffing to support efficient listing and recovery processes, collaborative conservation actions, and transparent rulemaking that strengthens the protection, restoration, and management of critical habitats essential to the recovery of endangered and threatened species.

To receive the protections afforded by the ESA, a species must first be listed as either an endangered or a threatened species. Whether a species warrants listing under the ESA depends upon its risk of extinction. To determine whether listing a species is warranted, the ESA requires that the USFWS conduct a review of the species' status and consider any efforts being made by any State or foreign nation (or subdivision thereof) to protect the species. The ESA also requires that determinations of whether a species meets the definition of an endangered or threatened species be based solely on the best scientific and commercial data available.

Currently, listing, delisting, and reclassification must rely on the best scientific and commercial data available "without reference to possible economic or other impacts of such determination." The proposed rule change would remove "without reference to possible economic or other impacts of such determination," signaling that agencies may acknowledge or discuss economic impacts when presenting listing decisions, although the ESA still prohibits economic factors from influencing the determination itself. Removing the phrase "without reference to possible economic or other impacts of such determination" is not consistent with the plain language of the statute requiring that classification determinations must be made solely on the basis of the best scientific and commercial data available. In addition, the language is not necessarily simply using plain language to assist the public understanding of the ESA.

With regard to delisting, the USFWS is proposing to revert to the 2019 version of § 424.11(e) that listed three circumstances in which it is appropriate to delist a species if: (1) the species is extinct; (2) the species does not meet the definition of a threatened or endangered species and; (3) the listed entity does not meet the definition of a species. The revisions made in 2019 better aligned the regulations with the statute and better achieved the fundamental objective of clarifying the standards and requirements that apply to delisting decisions. This proposed change does not reference delisting a species based on "recovery." Recovery Plans are developed for the conservation and survival of listed species in order to conserve and ultimately recover a species such that protections under the ESA are no longer necessary. Referencing a species recovery through the implementation of Recovery Plans must be stated with

regard to any classification change.

AZTWS requests reinstatement of language requiring that listing decisions be based solely on best scientific and commercial data, “without reference to economic or other impacts”; and the restoration of recovery-based delisting criteria with measurable, science-based recovery benchmarks.

Thank you for your considerations to our comments on the USFWS four proposed rule changes.

Regards,

Holly Hicks, President

Arizona Chapter of The Wildlife Society

December 22, 2025

Submitted via online portal

<https://www.regulations.gov/commenton/FWS-HQ-ES-2025-0048-0001>

Public Comments Processing
Attn: FWS-HQ-ES-2025-0048

U.S. Fish and Wildlife Service
MS: PRB/3W
5275 Leesburg Pike
Falls Church, VA 22041-3803

Re: Proposed Revisions to Designating Critical Habitat (50 CFR part 17; section 4(b)(2))

Please accept these comments submitted on behalf of the Colorado Chapter of The Wildlife Society. These comments pertain to the U.S. Fish and Wildlife Service's (USFWS) proposed revisions to Section 4(b)(2) of the Endangered Species Act of 1973 (Docket No. FWS-HQ-ES-2025-0048). These comments are based on our education, training, and experience as wildlife professionals who are committed to excellence in wildlife stewardship.

I. About the Colorado Chapter of The Wildlife Society

Established in 1973, the Colorado Chapter of The Wildlife Society (CCTWS) is a state affiliate of the international organization, The Wildlife Society (TWS). TWS was founded in 1937 and is a nonprofit professional society of active and retired leaders in wildlife science, management and conservation. CCTWS' 400+ members are students, educators, administrators, research scientists, consultants, resource managers, and wildlife law enforcement officers from all over Colorado. As a professional society, our mission is to promote wise conservation and management of all wildlife resources in Colorado by serving and representing wildlife professionals.

II. Comments Pertaining to Docket No. FWS-HQ-ES-2025-0048

We strongly urge the USFWS to not pursue changes to Section 4(b)(2) of the Endangered Species Act (ESA). The ESA in its current form requires critical habitat to be designated to the **"maximum extent prudent and determinable"; the proposed reversal of this longstanding policy to not exclude areas on federal lands from critical habitat designation violates this requirement and represents an abandonment of the government's responsibility outlines in their Congress-mandated missions.** Further, considering "the avoidance of the administrative or transactional costs associated with the [Section 7] consultation process *as a benefit of exclusion of a particular area of federal land*" (emphasis added) is likely to tip the scales in favor of excluding most, if not all, federally managed lands.

More than a third of Colorado lands are managed by the federal government on behalf of the American people, providing critical habitat to threatened and endangered species such as the black-footed ferret, Gunnison sage-grouse, greenback cutthroat trout, and boreal toad. **Proactive protection of critical habitats is essential to the recovery and protection of such species because it protects specific physical/biological features, including unoccupied areas needed for expansion and climate adaptation, ensuring the necessary landscape for long-term species survival.** Abandoning the government's responsibility to protect critical habitats

increases risk of extinctions, is contrary to the intent and goals of the ESA, and represents a break in the trust of the American people.

III. Closing

We appreciate the opportunity to engage in the public comment period for the proposed changes to Endangered Species Act regulations and sincerely hope these comments are considered. The Colorado Chapter of The Wildlife Society remains committed to advancing science-based management of the state's wildlife resources and recognizes that this rulemaking has the potential to influence conservation efforts by reshaping implementation of the ESA. We are available for future discussions at 4cctws@gmail.com.

Sincerely,

Conservation Affairs Committee
Colorado Chapter of The Wildlife Society
<https://4cctws.wixsite.com/colorado>

December 22, 2025

Submitted via online portal

<https://www.regulations.gov/commenton/FWS-HQ-ES-2025-0044-0001>

Public Comments Processing
Attn: FWS-HQ-ES-2025-0044

U.S. Fish and Wildlife Service
MS: PRB/3W
5275 Leesburg Pike
Falls Church, VA 22041-3803

Re: Proposed Revisions to Interagency Cooperation Regulations (50 CFR Part 402)

Please accept these comments submitted on behalf of the Colorado Chapter of The Wildlife Society. These comments are focused on the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) proposal to revise portions of regulations for Section 7 of the Endangered Species Act of 1973 ([Docket No. FWS-HQ-ES-2025-0044](#)). These comments are based on our education, training, and experience as wildlife professionals who are committed to excellence in wildlife stewardship.

I. About the Colorado Chapter of the Wildlife Society

Established in 1973, the Colorado Chapter of The Wildlife Society (CCTWS) is a state affiliate of the international organization, The Wildlife Society (TWS). TWS was founded in 1937 and is a nonprofit professional society of active and retired leaders in wildlife science, management and conservation. CCTWS' 400+ members are students, educators, administrators, research scientists, consultants, resource managers, and wildlife law enforcement officers from all over Colorado. As a professional society, our mission is to promote wise conservation and management of all wildlife resources in Colorado by serving and representing wildlife professionals.

II. Comments Pertaining to Docket No. FWS-HQ-ES-2025-0044

The proposed changes to Section 7 of the ESA would affect projects that require federal authorization, receive funding, or occur on federal lands.

Currently, every federal agency is required to consult with USFWS or NMFS/NOAA, as appropriate, to ensure that actions authorized, funded, or carried out by that initiating agency are not likely to jeopardize the existence of any endangered or threatened species or result in the destruction or adverse modification of habitat critical to a given species. This consultation is important in that discussions pertaining to designated/imperiled species and their habitat is required. **The proposed rule revises Formal consultation to remove the following verbiage:**

- "may include measures implemented inside or outside the action area that avoid, reduces, or offset the impact of incidental take"
- "Priority should be given to developing reasonable and prudent measures and terms and conditions that avoid or reduce the amount or extent of incidental taking anticipated to occur within the action area. To the extent it is anticipated that the action will cause incidental take that cannot feasibly be avoided or reduced in the action area, the Services may set forth additional reasonable and prudent measures and terms and

conditions that serve to minimize the impact of such taking on the species inside or outside the action area.”

Removal of such language takes away important conservation tools from the USFWS to mitigate impacts.

The definition of “environmental baseline” is a critical legal and scientific tool that determines the extent of environmental responsibility for federal actions under the ESA, balancing species protection with development and infrastructure priorities. The environmental baseline is used to evaluate a project’s potential effect. **Therefore, narrowing the “environmental baseline” definition** – notably, so that it’s evaluated “at the time of the proposed action,” specifying “current” conditions, and “as would reasonably be expected to occur” – will **weaken species protection**. This is because *existing impacts* become “residual noise” that make a proposed action appear to have a less severe effect because it limits the scope of review by allowing existing, harmful conditions to continue unaddressed because they are not considered consequences of the new proposed action. As such, this limits the USFWS’ ability to require mitigation.

Additionally, **changes to the definition and application of “reasonable and prudent measures” would prohibit prescribing compensation, offsets, or mitigation for impacts of incidental take**. The inability to set forth additional measures to minimize the impact of “takings” on a given species will strain already imperiled species, potentially dampening recovery effectiveness.

III. Closing

We appreciate the opportunity to engage in the public comment period for the proposed changes to the Endangered Species Act regulations and sincerely hope these comments are considered. The Colorado Chapter of The Wildlife Society remains committed to advancing science-based management of the state’s wildlife resources and recognizes that this rulemaking has the potential to influence conservation efforts by reshaping implementation of the ESA. We are available for future discussions at 4cctws@gmail.com.

Sincerely,

Conservation Affairs Committee
Colorado Chapter of The Wildlife Society
<https://4cctws.wixsite.com/colorado>

December 22, 2025

Submitted via online portal

<https://www.regulations.gov/commenton/FWS-HQ-ES-2025-0039-0001>

Public Comments Processing
Attn: FWS-HQ-ES-2025-0039

U.S. Fish and Wildlife Service
MS: PRB/3W
5275 Leesburg Pike
Falls Church, VA 22041-3803

Re: Proposed Revisions to Listing Endangered and Threatened Species and Designating Critical Habitat (50 CFR part 424)

Please accept these comments submitted on behalf of the Colorado Chapter of The Wildlife Society. These comments pertain to the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) proposal to revise Section 4 of the Endangered Species Act of 1973 ([Docket No. FWS-HQ-ES-2025-0039](#)). These comments are based on our education, training, and experience as wildlife professionals who are committed to excellence in wildlife stewardship.

I. About the Colorado Chapter of the Wildlife Society

Established in 1973, the Colorado Chapter of The Wildlife Society (CCTWS) is a state affiliate of the international organization, The Wildlife Society (TWS). TWS was founded in 1937 and is a nonprofit professional society of active and retired leaders in wildlife science, management, and conservation. CCTWS' 400+ members are students, educators, administrators, research scientists, consultants, resource managers, and wildlife law enforcement officers from all over Colorado. As a professional society, our mission is to promote wise conservation and management of all wildlife resources in Colorado by serving and representing wildlife professionals.

II. Comments Pertaining to Docket No. FWS-HQ-ES-2025-0039

The proposed change in regulations puts listed species at risk. The proposal to modify language for designating unoccupied areas as critical habitat to emphasize that it is appropriate *only* when occupied areas are insufficient for the conservation of a species *and* when the unoccupied area is actually habitat for the species is problematic. **Restricting designation of unoccupied critical habitat removes an important tool for managers, especially when dealing with already imperiled species for which habitat is a limiting factor.** A species may only occupy a fraction of its historic range, needing new areas for growth and expansion. Unoccupied critical habitat – areas outside a species' current range that are essential for its long-term survival and recovery – contains the necessary physical/biological features (food, shelter, breeding sites) for the species to expand or recolonize. Areas may be currently unoccupied for any number of reasons unrelated to the quality of the habitat such as drought or flooding, which might temporarily drive a species from an area, or die-offs, when a zoonotic disease wipes out a particular species in a given area. In other words, an area might be suitable habitat but temporarily unoccupied for reasons not related to the quality or location of that habitat. Even when habitat has been degraded, it can be restored to meet the needs of an imperiled species and serve as habitat. As such, these lands

should still be prioritized when designating habitat. Designation as critical habitat requires federal agencies to avoid action that would “destroy or adversely modify” these habitats. This proposed rule is likely to result in less critical habitat, which is problematic for wildlife conservation because federal law is often the only law protecting such habitats. Proactive protection of critical habitats is essential to the recovery and protection of such species because it protects specific physical/biological features, including unoccupied areas species need for expansion, refuge, and climate adaptation, ensuring the necessary landscape for long-term species survival. Abandoning the government’s responsibility to protect critical habitats increases risk of extinctions, is contrary to the intent and goals of the ESA, and represents a break in the trust of the American people.

Concerning the proposed addition of economic and other factors when listing, delisting, or reclassifying a species, including such considerations directly conflicts with the ESA statute, which expressly requires the Services to make listing determinations “solely on the basis of the best scientific and commercial data available.” In 1982, congress added the word “solely” to clarify the intent that endangered or threatened species determinations were to be made without considering potential economic impacts. Further, a report from the House Committee on Merchant Marine and Fisheries recommended the change state, “The addition of the word ‘solely’ is intended to remove from the process of the listing or delisting of species any factor not related to the biological status of the species. The Committee strongly believes that economic considerations have no relevance to determinations regarding the status of species ...”¹ Adding economic and other considerations to the listing process will not benefit endangered and threatened species conservation outcomes.

Allowing economic impacts to be considered in listing decision risks having development prioritized against species conservation. While deliberations would include biological considerations, perceptions about commercial costs may slow down the listing process at the peril of the species and influence final determinations (even if unintended).

The proposed clarification of the interpretation of “**foreseeable future**” from:

- Current version: “The foreseeable future extends as far into the future as the Services can make reasonably reliable predictions about the threats to the species and the species’ responses to those threats” to
- New (2019) version: “The term foreseeable future extends only so far into the future as the Services can reasonably determine that *both* the future threats *and* the species’ responses to those threats *are likely*.” (emphasis added)

This apparent minor adjustment **may result in an interpretation that minimizes longer-term threats to species**, such as loss of habitat and disruption of food resources due to climate change, when considering listing decisions.

Additionally, **fewer species may meet the criteria to be designated as threatened because of the more restrictive definition of “foreseeable future.”** Under the revised language, the USFWS must be able to determine that *both* the future threats and the species responses are likely. With

¹ Reported to House (Amended) by House Committee on Merchant Marine and Fisheries. Report No: 97-567 (Part I). 05/05/1982 <https://www.congress.gov/bill/97th-congress/house-bill/6133/all-info>

fewer species receiving protection, it is expected that more species are likely to face unsustainable futures and face higher costs to recover with lower chances of recovery.

Concerning the proposed requirement of a “Reasonable Certainty” determination to designate unoccupied areas as critical habitat, introducing a new, potentially arbitrary standard to the designation process is likely to undermine the goals of the ESA while also running contrary to the administration’s intent to interpret the ESA’s “single, best meaning” under *Loper Bright Enterprises v. Raimondo*. The term “reasonable certainty” is not defined in the ESA and prior to 2019, nor was it used anywhere in the ESA at this time because there is no legal or scientific standard or definition for what constitutes “reasonable certainty”. In 2016, a Department of Justice commission published a report² stating that terms such as “reasonable scientific certainty,” and “reasonable degree of scientific certainty” “have no scientific meaning”, leading the U.S. Attorney General to issue a memo³ later the same year directing the department not to use such terms in their reports or testimony. Using a legally and scientifically undefined term as a standard for determining critical habitat – which could mean the difference between survival and extinction for some species – will introduce the opportunity for indefensible interpretations of what constitutes “reasonable certainty”, some of which may be arbitrary or capricious. It is our opinion that introducing such ambiguity will not lead to better outcomes for species or allow for the single, best interpretation of the ESA under *Loper Bright*.

Concerning the proposed additions to “Not Prudent Determination” criteria, abdicating the responsibility to protect endangered species habitat simply because the threat to that species is bigger than can be addressed through the Section 7 consultation process abandons the stated intent of the ESA. The ESA statute cites habitat destruction and modification as first in a list of possible reasons a species may be considered endangered or threatened (Sec. 4(1)(a)). The opening line of the purpose statement says, “The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved” (Sec. 2(b)). This statement makes clear that the original intent of the Act explicitly includes ecosystem (i.e. habitat) conservation as a fundamental component of threatened and endangered species conservation. If the Services surrender their responsibility to designate critical habitat for endangered species because the threat to that habitat is the result of ever-present and growing threats to so many ecosystems - such as ocean acidification or climate change - this could be used to justify Not Prudent Determinations for nearly any species. In reality, when a species is facing such large-scale extinctions pressures, it’s even more important to conserve and protect critical habitat that can serve as a refuge.

III. Closing

The Endangered Species Act is a seminal piece of legislation protecting plant and animal species and a model for countries around the world. The proposed rule will undermine protections for threatened and endangered species, resulting in irreparable losses to some of the very things that define Colorado’s lands, shape our local communities, and make America great. For this and future generations, it is imperative that the Services not proceed with the referenced rule changes.

² National Commission on Forensic Science, Testimony Using the Term “Reasonable Scientific Certainty” (available at <https://www.justice.gov/archives/nfcs/file/795336/download>)

³ Department of Justice Memorandum, Recommendations of the National Commission on Forensic Science; Announcement for NCFs Meeting Eleven (Sept. 6, 2016) (available at <https://www.justice.gov/opa/file/891366/download>)

We appreciate the opportunity to engage in the public comment period for the proposed changes to the ESA regulations and sincerely hope these comments are considered. The Colorado Chapter of The Wildlife Society remains committed to advancing science-based management of the state's wildlife resources and recognizes that this rulemaking has the potential to influence conservation efforts by reshaping implementation of the ESA. We are available for future discussions at 4cctws@gmail.com.

Sincerely,

Conservation Affairs Committee
Colorado Chapter of The Wildlife Society
<https://4cctws.wixsite.com/colorado>

December 22, 2025

Submitted via online portal

<https://www.regulations.gov/commenton/FWS-HQ-ES-2025-0029-0001>

Public Comments Processing
Attn: FWS-HQ-ES-2025-0029

U.S. Fish and Wildlife Service
MS: PRB/3W
5275 Leesburg Pike
Falls Church, VA 22041-3803

Re: Proposed Revisions to Threatened Species Protections (50 CFR part 17; section 4(d))

Please accept these comments submitted on behalf of the Colorado Chapter of The Wildlife Society. These comments pertain to the U.S. Fish and Wildlife Service's (USFWS) proposed revisions to Section 4(d) of the Endangered Species Act of 1973 ([Docket No. FWS-HQ-ES-2025-0029](#)). These comments are based on our education, training, and experience as wildlife professionals who are committed to excellence in wildlife stewardship.

I. About the Colorado Chapter of The Wildlife Society

Established in 1973, the Colorado Chapter of The Wildlife Society (CCTWS) is a state affiliate of the international organization, The Wildlife Society (TWS). TWS was founded in 1937 and is a nonprofit professional society of active and retired leaders in wildlife science, management, and conservation. CCTWS' 400+ members are students, educators, administrators, research scientists, consultants, resource managers, and wildlife law enforcement officers from all over Colorado. As a professional society, our mission is to promote wise conservation and management of all wildlife resources in Colorado by serving and representing wildlife professionals.

II. Comments Pertaining to Docket No. FWS-HQ-ES-2025-0029

We strongly urge USFWS to reconsider proposed changes to Section 4(d) of the ESA. While the idea of protection measures tailored to the specific threats to a given species is laudable, in reality **the proposed rule will overburden the USFWS, leave imperiled species unprotected for longer, and introduce considerations that are contrary to the intent of the ESA.**

USFWS has long been understaffed and underfunded, and recent reductions in personnel and budgets by the Federal administration have increased this burden. Since 2024, USFWS staffing has been cut by 18% and the proposed 2026 budget would cut funding by almost a third¹. Designating a species as threatened or endangered under the ESA is a time consuming, laborious process; removing the option to protect threatened species under the 4(d) "blanket rule" will further encumber the USFWS' already strained ability to fulfill its mission to "work with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people."

¹ U.S. Department of the Interior. 2025. *Fiscal Year 2026 Interior Budget Brief U.S. Fish and Wildlife Service*. <https://www.doi.gov/budget/appropriations/2026/highlights>

Further, it is unclear from the proposed regulation change whether candidate species will have to wait for a determination until species-specific protections are drafted or if listing will occur and protections drafted later. At risk is the potential for threatened species to continue to decline because of lack of protection in the interim, increasing both the chance of further habitat/population loss and the likelihood of future reclassification as an endangered species, thus closer at risk of extinction. The blanket rule provides wildlife practitioners with the ability to proactively protect vulnerable and imperiled species, reducing the need for more costly and administratively burdensome interventions in the future².

The proposed “necessary and advisable” determination process will also put species at risk by introducing considerations that were never intended. By statute, economic considerations may solely be considered when designating critical habitat for endangered species. All other determinations are to be made based on the best scientific (and sometimes commercial) data. The only way the ESA can function to protect, conserve, and recover imperiled species is to follow the best available science, as intended by the Act. Allowing economic interests to shape how the ESA is implemented will jeopardize one of this country’s seminal pieces of environmental legislation. Further, introducing a brand-new, two-step process for determination into the ESA directly contradicts the Federal administration’s intent to interpret the ESA’s “single, best meaning” under *Loper Bright Enterprises v. Raimondo*. The proposed rule change injects economic considerations into a process that, by statute, bars economic considerations.

The proposal to remove the blanket rule in 2019 occurred a few months after the United Nations released a landmark report from the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES)³. Compiled by 145 expert authors from 50 countries that reviewed approximately 15,000 scientific and government sources. The IPBES Global Assessment Report warned that one million species could go extinct without more sustainable policies that “steer away from the current limited paradigm of economic growth.” Since then, biodiversity continues to decline faster than at any other time in human history, including here in the United States⁴. With 41% of ecosystems in the U.S. at risk of range-wide collapse, reducing protections for imperiled species will likely result in increasing pressures on their habitat/ecosystems, further compromising our nation’s ecological health.

The ESA is a seminal piece of legislation protecting plant and animal species and a model for countries around the world. The proposed rule will undermine protections for threatened and endangered species, resulting in irreparable losses to some of the very things that define Colorado’s lands, shape our local communities, and make America great. For this and future generations, we implore USFWS to not to proceed with the referenced rule changes.

III. Closing

We appreciate the opportunity to engage in the public comment period for the proposed changes to the Endangered Species Act regulations and sincerely hope these comments are considered. The Colorado Chapter of The Wildlife Society remains committed to advancing

² Myers, S. 2022. *The Endangered Species Act: Does the Blanket Rule protect animal or human interests?* Rutgers Journal of Law & Public Policy, Vol 19(2).
https://rutgerspolicyjournal.org/jlpp/wp-content/uploads/sites/26/2022/04/Myers_Final_Spring2022_4.pdf

³ <https://www.un.org/sustainabledevelopment/blog/2019/05/nature-decline-unprecedented-report/>

⁴ NatureServe. 2023. *Biodiversity in Focus: United States Edition*.
https://www.natureserve.org/sites/default/files/NatureServe_BiodiversityInFocusReport_medium.pdf

science-based management of the state's wildlife resources and recognizes that this rulemaking has the potential to influence conservation efforts by reshaping implementation of the ESA. We are available for future discussions at 4cctws@gmail.com.

Sincerely,

Conservation Affairs Committee
Colorado Chapter of The Wildlife Society
<https://4cctws.wixsite.com/colorado>



North Carolina Chapter The Wildlife Society

December 21, 2025

US Fish and Wildlife Service (US FWS)
Department of the Interior
5275 Leesburg Pike, Falls Church, VA 22041-3803

National Oceanic and Atmospheric Administration
Department of Commerce
National Marine Fisheries Service (NMFS)
1315 East-West Highway, Silver Spring, MD 20910

Subject: Proposed changes to Regulations Guiding Implementation of Endangered Species Act

Docket Numbers:

- 1) (50 CFR 424) – FWS–HQ–ES–2025–0039; NMFS-251105-0168
- 2) (50 CFR 402) – FWS–HQ–ES–2025–0044; NMFS-251105-0167
- 3) (50 CFR 17) – FWS–HQ–ES–2025–0029
- 4) (50 CFR 17)– FWS–HQ–ES–2025–0048

Dear Directors,

[The North Carolina Chapter of The Wildlife Society](#) is an association of wildlife professionals from federal and state agencies, academia, industry, and conservation organizations involved in wildlife research, education, conservation, and habitat management.

On behalf of the **North Carolina Chapter of The Wildlife Society (NCTWS)**, *we write to oppose the four major rules revising ESA implementation: listing/delisting, critical habitat, interagency consultation (Section 7), and protections for threatened species (Section 4(d)) proposed by the Services (US FWS & NMFS)*. Together, these rules would severely weaken how species are listed, how habitat is protected, and how federal agencies collaborate and evaluate ongoing and future impacts.

Below, we outline the issues with each proposed rule, why we oppose them, and recommendations to maximize the ESA Provisions to protect threatened/endangered plant and animal species and the critical habitats they inhabit.

- 1) [Section 4- Listing, Delisting and Critical Habitat Framework](#)

The proposed revision to Section 4 intends to reinstate the 2019 provisions to "clarify and interpret portions of the Act concerning the procedures and criteria used for listing, reclassifying, and delisting species." We specifically identify 2 issues with the prioritization of economic impact in the decision-making. First, the proposed removal of the regulatory language that prohibits consideration of economic impacts in the process, referring to such a key prohibition as a limit on listing determinations and thereby increasing the risk of political pressure and removing the delisting standards. Second, it narrows the definition of "foreseeable future," limiting the use of long-term climate and ecological projections, creating further uncertainty for climate-imperiled species. As a result, the "foreseeable future" definition instead weakens the substantive standards used in the ESA listing process (Bauer, 2022). According to a 2019 study, while the overwhelming majority of species listed as endangered are sensitive to shifts in climate patterns, conservation actions for those species lack adequate attention from agencies (Delach et al. 2019). We urge the Services to restore the population- and habitat-recovery-based delisting criteria, with measurable, science-based recovery benchmarks. In addition, we reemphasize broadening the definition of the "foreseeable future" to recognize long-term climate and ecological models as part of the best available science and ensure that long-term climate and habitat threats are included.

2) [Section 7: Interagency Consultation](#)

As stated in Section 7 of the ESA, effective interagency consultation with the services prevents adverse modifications of critical habitats and the resulting negative impacts on any listed species and the ecosystem as a whole, through the effective use of the "precautionary principle." The proposed restoration of narrower definitions of "effects of the action" and "environmental baseline" to the 2019 revisions will eliminate provisions that allow consideration of credible mitigation or offsets, even when scientifically supported. Some examples include limited analysis of indirect, cumulative, and short- and long-term climate-driven impacts. [NOAA Fisheries' assessment](#) concludes that "climate change will continue to amplify existing threats to our Species in the Spotlight—10 endangered, highly at-risk marine and anadromous species." Further, [the USFWS article](#) emphasizes the importance of climate models for predicting the range of future conditions. Climate models and essential tools, together with an adaptive/inclusive management approach, are needed if we are to protect biodiversity and maintain ecosystem services. Therefore, we request reinstatement of broader, scientifically supported definitions of "effects" that include indirect and cumulative impacts. In addition, we recommend that climate-driven effects, landscape-scale habitat trends, invasive species and other cumulative threats be incorporated in all baselines and effects analyses.

3) [Section 4\(d\): Protections for Threatened Species / Blanket Rule Removal](#)

Under the Section 4(d) blanket rule, species listed as threatened by the US FWS automatically receive the same protections as endangered species, as threatened species are at risk of extinction without adequate protection. Removing the "blanket rule" and requiring the species-specific 4(d) framework for every threatened species will create a risk of protection gaps for the newly listed species. This will significantly increase the workload of agency professionals while making the rule inconsistent with conservation biology and ecological principles that agencies depend on to make such determinations. One adverse effect could be a decline in Ecological Services that pertains not only to biodiversity but also climate/disease regulation, clean air/water and

resource/food security. We request acknowledgment that capacity constraints must not delay essential protections or recovery actions that will reverberate across the air/water/resource/food security sector of human society, inflicting exorbitant costs on mitigation efforts.

4) Section 4(b)(2): Critical Habitat Exclusions / Economic & Other Impacts

The proposed rule affords the Services with broad discretion to exclude critical habitat based on economic impacts, social considerations, or national security claims. The rule aims to expedite federal permitting for short-term mining, development, energy, and infrastructure projects. However, it doesn't provide a transparent, standardized methodology for weighing costs vs. conservation benefits, and specifically for long-term climate shifts as mentioned above. It also allows exclusion analyses to be triggered by external requests with minimal thresholds ("credible information"). It creates a pathway for excluding habitat needed for climate adaptation or future range shifts. In reality, disruptions to ecological functions (habitat loss and degradation, biodiversity loss, invasive species, pest and disease outbreaks, and overharvesting) can pose national security risks, including food security, water scarcity, health security, protection from natural disasters, and environmental crime (Cardinale et al. 2025a). We request that exclusion analyses explicitly disclose uncertainties in both economic projections and ecological consequences. In addition, we recommend establishing a prohibition excluding areas essential for climate adaptation, habitat connectivity, or future occupancy. We also recommend requiring the Secretary to publish rationale and supporting science for all exclusion decisions.

In Conclusion, our analysis makes it clear that the proposed regulatory changes to the key ESA provisions that emphasize species-specific approaches and critical habitat exclusions are more discretionary and can be circumvented (Kobilinsky, 2025), thereby undercutting protection for imperiled species and triggering costly litigations (Li et al., 2020). The ESA is one of the most successful conservation legislations in American history in terms of protecting species and critical habitat (Godfrey, 2021; US FWS All Listed US Species & Delisted Species, n.d.). The ESA decision-making must remain grounded in the best available scientific projections that incorporate cumulative threats in adaptive management decisions essential to sustain biodiversity and vital ecosystem functions. Contrary to the rationale the Services provide for the proposed ESA revisions, resilient ecosystems with healthy biodiversity enhance national security and economic growth, not to mention numerous ecosystem services benefits that society attains (US Fish & Wildlife Service, 2023). There's an opportunity to prioritize landscape-scale, ecosystem-focused biodiversity investment through an interdisciplinary approach (Schwartz et al. 2025). Therefore, we urge the Services to immediately withdraw all four proposed revisions to safeguard imperiled species, their critical habitats and human society.

Sincerely,

David Mattocks

President of the North Carolina Chapter of The Wildlife Society

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North Carolina Chapter The Wildlife Society

December 21, 2025

US Fish and Wildlife Service (US FWS)
Department of the Interior
5275 Leesburg Pike, Falls Church, VA 22041-3803

National Oceanic and Atmospheric Administration
Department of Commerce
National Marine Fisheries Service (NMFS)
1315 East-West Highway, Silver Spring, MD 20910

Subject: Proposed changes to Regulations Guiding Implementation of Endangered Species Act

Docket Numbers:

- 1) (50 CFR 424) – FWS–HQ–ES–2025–0039; NMFS-251105-0168
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As stated in Section 7 of the ESA, effective interagency consultation with the services prevents adverse modifications of critical habitats and the resulting negative impacts on any listed species and the ecosystem as a whole, through the effective use of the "precautionary principle." The proposed restoration of narrower definitions of "effects of the action" and "environmental baseline" to the 2019 revisions will eliminate provisions that allow consideration of credible mitigation or offsets, even when scientifically supported. Some examples include limited analysis of indirect, cumulative, and short- and long-term climate-driven impacts. [NOAA Fisheries' assessment](#) concludes that "climate change will continue to amplify existing threats to our Species in the Spotlight—10 endangered, highly at-risk marine and anadromous species." Further, [the USFWS article](#) emphasizes the importance of climate models for predicting the range of future conditions. Climate models and essential tools, together with an adaptive/inclusive management approach, are needed if we are to protect biodiversity and maintain ecosystem services. Therefore, we request reinstatement of broader, scientifically supported definitions of "effects" that include indirect and cumulative impacts. In addition, we recommend that climate-driven effects, landscape-scale habitat trends, invasive species and other cumulative threats be incorporated in all baselines and effects analyses.

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North Carolina Chapter The Wildlife Society

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Department of the Interior
5275 Leesburg Pike, Falls Church, VA 22041-3803

National Oceanic and Atmospheric Administration
Department of Commerce
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RE: Comments on Proposed ESA Regulations — Listing, Critical Habitat Designation and Exclusions, Section 7 Consultations, and 4(d) Protective Regulations

Dear Director Nesvik (U.S. Fish and Wildlife Service) and Assistant Administrator Coit (NOAA Fisheries),

We appreciate the opportunity to comment on the proposed revisions to Endangered Species Act (ESA) regulations. As an organization committed to effective conservation of threatened and endangered wildlife, we respectfully submit the following comments urging your agencies to retain strong, science-based protections and to avoid weakening regulatory provisions essential to species recovery.

While we understand the intention to align rulemaking with recent case law and statutory interpretation, the collective impact of the four proposed regulations—particularly the narrowing of listing criteria, expanded discretion to forgo or exclude critical habitat, elimination of the blanket 4(d) rule, and more restrictive section 7 standards—risks undermining the ESA’s core purpose: preventing extinction and promoting recovery based on the best available science.

Documents provided by the agencies reveal that the proposed changes would:

- Make critical habitat designations less likely;
- Raise barriers for protecting unoccupied and climate-adaptive habitat;
- Reduce emphasis on recovery in delisting decisions;
- Introduce non-scientific considerations into listing documentation;
- Provide fewer automatic protections for newly listed threatened species; and
- Limit the scope of effects considered in section 7 consultations.

These shifts collectively threaten the long-term conservation outcomes for many imperiled species.

Based on these proposed changes, we urge the agencies to preserve the ESA’s science-only foundation for listing decisions. Removing the phrase prohibiting reference to economic impacts risks inviting inappropriate political pressure. Additionally, delisting should remain firmly linked to clear evidence of recovery. Eliminating explicit recovery criteria and restricting the scope of “foreseeable future” undermines protection for species facing long-term threats, including climate change, invasive species, and habitat fragmentation.

Furthermore, critical habitat is one of the ESA’s most effective tools for recovery. Expanding “not prudent” determinations and raising the standard for designating unoccupied habitat will severely restrict the ability to protect areas needed for climate adaptation and for species with shifting ranges. These changes are inconsistent with modern ecological realities and with the best available science showing that habitat loss and fragmentation remain primary drivers of species declines.

Commented [AHI]: Is this correct for our letter? Not sure if these are the current Directors or the correct administration we should be commenting to.

The reinstated 2020 framework allows broad discretion to exclude areas—potentially including essential federal lands—based on economic or political concerns. While partnership and landowner engagement are critical, exclusions should be rare and science-driven. The ESA’s extinction “backstop” is an extremely high threshold that does not substitute for robust biological analysis. We encourage the agencies to adopt more transparent and biologically grounded standards for exclusion decisions.

Eliminating mitigation (“offset”) provisions and narrowing the scope of “effects of the action” reduce the ability of federal agencies to avoid or minimize harm to listed species. Species already face increasing pressures; weakening consultation tools risks further declines. Clear, flexible consultation frameworks benefit both wildlife and project proponents and should be retained. Also, removing the blanket 4(d) rule will require species-specific protections, which may create significant delays. This risks leaving newly listed threatened species without meaningful safeguards during their most vulnerable period. Given agency workload and the pace of new listings, automatic protections remain essential.

For efficient implementation of the ESA, we need durable, science-based solutions rather than short-term regulatory efficiency. Efficiency is essential for both conservation and development, and it should be improved through clearer guidance and stronger agency capacity—not by weakening biological standards or narrowing threat analyses. A workable middle ground would maintain science-driven listing and habitat decisions while addressing economic concerns downstream through project planning and mitigation, and by investing in agency expertise rather than outsourcing or reducing protections to match recent diminished capacity of the USFWS and NOAA.

In conclusion, **the ESA can be improved through better implementation and proactive conservation, not by narrowing science, weakening early protections, or prioritizing short-term economic expediency.** Any compromise must preserve the Act’s scientific foundation and long-term effectiveness, and public engagement is critical because the ESA remains one of the most broadly supported environmental laws in the United States. The proposed rule package would collectively weaken these foundations. We strongly encourage USFWS and NOAA to maintain regulatory provisions that uphold rigorous biological standards, ensure timely habitat protection, and support species recovery.

Thank you for considering these comments and for your agencies’ continuing efforts to conserve our nation’s wild resources. We welcome any opportunity to provide additional input or discuss these issues further. Thank you for your time.

Sincerely,

Dr. Aaron Haines and Other Officers of the Pennsylvania Chapter of the Wildlife Society

(<https://wildlife.org/pennsylvania-chapter/>)

December 20, 2025

Public Comments Processing
Attn: FWS–HQ–ES–2025–0029
U.S. Fish and Wildlife Service
MS: PRB/3W
5275 Leesburg Pike
Falls Church, VA 22041-3803



Subject: Endangered and Threatened Wildlife and Plants; Regulations Pertaining to Endangered and Threatened Wildlife and Plants (Section 4(d)) (Docket No. FWS–HQ–ES–2025–0029)

Dear Sir or Madam,

The Wildlife Society (TWS) San Francisco Bay Area Chapter appreciates the opportunity to comment on the U.S. Fish and Wildlife Service’s proposed revisions to regulations governing protections for threatened species under Section 4(d) of the Endangered Species Act (ESA).

Introduction

Our Chapter represents professional wildlife biologists and conservation practitioners with direct experience implementing ESA protections for threatened species across California and the western United States. We recognize the statutory authority for the Service to develop species-specific 4(d) rules; however, we are concerned that the proposed elimination of the long-standing blanket 4(d) rule creates substantial risks for newly listed threatened species, particularly given existing capacity constraints within Ecological Services programs.

1. Risk of Protection Gaps for Newly Listed Threatened Species

The blanket 4(d) rule has historically served as an essential interim safeguard, ensuring that threatened species receive meaningful protections immediately upon listing. Eliminating this default protection framework creates a risk that newly listed threatened species may experience a gap in protections while species-specific 4(d) rules are developed.

Such gaps are especially problematic during the period immediately following listing, when species are often experiencing acute threats and heightened scrutiny. Allowing take or other harmful activities during this window undermines the ESA’s precautionary intent and may irreversibly compromise recovery prospects.

Recommendation:

We strongly recommend that the Service retain interim application of endangered-level protections (50 CFR §17.31) for newly listed threatened species until a species-specific 4(d) rule is finalized and implemented.

2. Capacity Constraints and Implementation Feasibility

The proposed rule would require the development of species-specific 4(d) rules for every newly listed threatened species. While tailored regulations can be beneficial, this approach significantly increases workload for already resource-constrained Ecological Services programs.

Many Service field offices are currently operating with limited staffing while managing growing responsibilities related to listing petitions, recovery planning, Section 7 consultation, habitat conservation planning, and climate adaptation. Without substantial increases in funding and staffing, the requirement for universal species-specific 4(d) rules risks delaying protections, reducing analytical quality, and diverting staff time from recovery implementation.

Recommendation:

We urge the Service to explicitly acknowledge capacity limitations and ensure that threatened species receive immediate, enforceable protections regardless of the timeline for developing species-specific 4(d) rules.

3. “Necessary and Advisable” Determinations Must Be Transparent and Science-Based

Section 4(d) requires that protections for threatened species be “necessary and advisable” to provide for conservation. Under the proposed rule, this determination takes on heightened importance, as protections will no longer default to endangered-level safeguards.

Without clear standards, there is a risk that 4(d) rules could authorize take or exempt activities that are inconsistent with long-term recovery or based on insufficient scientific justification. Transparency and rigor in these determinations are essential to maintaining public trust and conservation effectiveness.

Recommendation:

We request that all species-specific 4(d) rules include a clearly articulated “necessary and advisable” finding grounded in the best available science, explicitly linking authorized activities and prohibitions to species-specific threats, population status, and recovery needs.

4. Risk of Authorizing Take Inconsistent with Recovery

The proposed approach increases the likelihood that exemptions or authorizations under 4(d) rules could allow take or habitat degradation that is inconsistent with conservation and recovery objectives. This risk is heightened when cumulative impacts and long-term threats—such as climate change and habitat fragmentation—are not fully accounted for.

Threatened species often exist at population levels or distributional extents that leave little margin for additional loss. Regulatory frameworks that permit incremental harm without clear conservation benefit undermine the ESA’s purpose and may lead to preventable declines.

Recommendation:

We urge the Service to ensure that species-specific 4(d) rules are precautionary in nature, avoid authorizing take that could compromise recovery, and explicitly consider cumulative and climate-driven threats.

5. Alignment with Conservation Outcomes

While tailored 4(d) rules can provide flexibility, flexibility must not come at the expense of conservation outcomes. The ESA’s success depends on timely protections that stabilize populations and

create space for recovery actions to take effect.

TWS emphasizes that regulatory approaches should prioritize biological effectiveness over administrative convenience and that threatened species protections should err on the side of conservation where uncertainty exists.

Conclusion

The blanket 4(d) rule has long functioned as a critical conservation backstop for threatened species. Eliminating this framework without ensuring immediate, science-based protections and adequate agency capacity risks creating protection gaps that could undermine species recovery.

We respectfully request that the Service revise the proposed rule to retain interim endangered-level protections for newly listed threatened species, ensure transparent and rigorous “necessary and advisable” determinations, and acknowledge that capacity constraints must not delay essential protections.

Thank you for the opportunity to provide comments and for your continued efforts to conserve imperiled species. Please contact Scott Lindemann, Chair of the Conservation Affairs Committee, at tws.sf.conservation@gmail.com for additional information or clarification.

Sincerely,



Lauren Ross
President
SF Bay Area Chapter of The Wildlife Society
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December 20, 2025

Public Comments Processing
Attn: FWS–HQ–ES–2025–0039
U.S. Fish and Wildlife Service
MS: PRB/3W
5275 Leesburg Pike
Falls Church, VA 22041-3803



Subject: Endangered and Threatened Wildlife and Plants; Listing Endangered and Threatened Species and Designating Critical Habitat (Docket No. FWS–HQ–ES–2025–0039)

Dear Sir or Madam,

The Wildlife Society (TWS) San Francisco Bay Area Chapter appreciates the opportunity to comment on the U.S. Fish and Wildlife Service’s and National Marine Fisheries Service’s proposed revisions to the regulations governing the listing, delisting, reclassification of species, and the designation of critical habitat under Section 4 of the Endangered Species Act (ESA).

Introduction

The Wildlife Society (TWS) is a non-profit professional society representing over 11,000 wildlife biologists and managers, dedicated to excellence in wildlife stewardship through science and education. Our mission is to inspire, empower, and enable wildlife professionals to sustain wildlife populations and habitats through science-based management and conservation. Our members include experts in species recovery, ecological monitoring, and habitat conservation who work daily to uphold the purpose and intent of the ESA. As such, we have a strong interest in ensuring that ESA regulations remain scientifically rigorous, transparent, and effective in conserving imperiled species and the ecosystems upon which they depend.

TWS strongly supports ESA decision-making that is grounded solely in the best scientific and commercial data available, consistent with the plain language and intent of the Act. We are concerned that several aspects of the proposed rule would weaken scientific integrity, increase susceptibility to political pressure, and reduce the ESA’s effectiveness in addressing long-term and cumulative threats, including climate change.

1. Removal of Explicit Prohibition on Considering Economic Impacts in Listing Decisions

The proposed rule removes regulatory language stating that listing determinations must be made “without reference to possible economic or other impacts.” While the statutory prohibition on considering economic impacts during listing decisions remains, removing this language from the regulations risks undermining the clarity and integrity of the listing process.

Listing determinations are among the most scientifically consequential actions under the ESA and must remain insulated from economic and political considerations. Introducing economic impact discussions into the listing rulemaking process—even indirectly—creates a substantial risk of biasing scientific evaluations and increasing external pressure on agency scientists and decision-makers.

Recommendation:

We urge the Services to reinstate explicit regulatory language affirming that listing and reclassification decisions must be based solely on the best scientific and commercial data available, without reference to economic, political, or social impacts. This clarity is essential to maintain public trust, scientific credibility, and consistency in ESA implementation.

2. Narrowing of the “Foreseeable Future” Definition

The proposed rule reverts to a more restrictive interpretation of “foreseeable future,” limiting the temporal scope of threat analyses to timeframes for which the Services can make reasonably reliable predictions. While scientific rigor is essential, the proposed definition risks excluding well-supported long-term projections that are critical for evaluating extinction risk.

Many of the most significant threats facing imperiled species—such as climate change, sea level rise, altered hydrology, wildfire regime shifts, and habitat fragmentation—operate over extended timescales. Peer-reviewed climate and ecological models routinely provide robust, probabilistic projections over these longer horizons and are widely accepted in conservation science.

Restricting the foreseeable future to short-term or near-term projections may systematically underestimate extinction risk and delay conservation action until recovery options are more limited or infeasible.

Recommendation:

We recommend broadening the definition of “foreseeable future” to explicitly allow consideration of long-term, species-relevant climate and ecological projections where supported by the best available science. The Services should affirm that uncertainty does not preclude consideration of future threats when reliable scientific models and multiple lines of evidence are available.

3. Delisting Standards and Recovery-Based Criteria

The proposed rule would revert to delisting standards that no longer clearly require a demonstration that a species has achieved recovery objectives prior to delisting. This approach risks weakening the ESA’s core conservation purpose by allowing species to be removed from protection without clear evidence of sustained recovery.

Recovery planning, population viability analysis, and habitat security are foundational components of successful species conservation. Delisting decisions that are not tied to measurable, science-based recovery criteria increase the likelihood of species backsliding and relisting, undermining conservation efficiency and public confidence.

Recommendation:

We urge the Services to restore explicit, recovery-based delisting criteria that require demonstration of sustained population viability, habitat security, and threat abatement, supported by quantitative and peer-reviewed scientific evidence.

4. Ambiguity Around “Best Scientific and Commercial Data Available”

The proposed revisions reduce clarity regarding what constitutes the “best scientific and commercial data available,” increasing the risk that critical data sources—such as climate modeling, landscape-scale analyses, and long-term ecological studies—could be discounted or excluded.

Modern conservation biology relies on integrated datasets, modeling approaches, and scenario

analyses to assess extinction risk and recovery potential. These tools are especially critical for wide-ranging species, species with complex life histories, and species affected by climate-driven habitat change.

Recommendation:

We ask the Services to explicitly recognize long-term climate projections, landscape-scale ecological models, and cumulative-impact analyses as valid components of the best available science when conducting listing and reclassification determinations.

Conclusion

The ESA has been one of the most effective conservation statutes in the world precisely because it requires decisions to be grounded in science rather than economics or politics. The proposed revisions to Section 4 risk weakening that foundation by narrowing scientific analyses, increasing ambiguity, and reducing transparency.

We respectfully request that the Services revise the proposed rule to reaffirm scientific integrity, incorporate long-term threat analysis, and ensure that listing and delisting decisions continue to reflect the ESA's conservation mandate.

Thank you for the opportunity to provide comments and for your continued efforts to conserve imperiled species. Please contact Scott Lindemann, Chair of the Conservation Affairs Committee, at tws.sf.conservation@gmail.com for additional information or clarification.

Sincerely,



Lauren Ross
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December 20, 2025

Public Comments Processing
Attn: FWS–HQ–ES–2025–0044
U.S. Fish and Wildlife Service
MS: PRB/3W
5275 Leesburg Pike
Falls Church, VA 22041-3803



Subject: Endangered and Threatened Wildlife and Plants; Interagency Cooperation Regulations (Docket No. FWS–HQ–ES–2025–0044)

Dear Sir or Madam,

The Wildlife Society (TWS) San Francisco Bay Area Chapter appreciates the opportunity to comment on the proposed revisions to the interagency cooperation regulations implementing Section 7 of the Endangered Species Act (ESA).

Introduction

Our Chapter represents professional wildlife biologists and conservation scientists who regularly participate in Section 7 consultations as action agency staff, consultants, researchers, and technical reviewers. Our members rely on the consultation framework to ensure that federal actions are evaluated using the best available science and that impacts to listed species and designated critical habitat are fully and transparently assessed.

TWS supports Section 7 regulations that enable comprehensive, science-based analyses of direct, indirect, cumulative, and climate-driven effects, consistent with the conservation purposes of the ESA. We are concerned that several elements of the proposed rule would significantly narrow the scope of effects analysis, reduce transparency, and limit the Services' ability to address cumulative threats to listed species.

1. Narrowing of “Effects of the Action” and “Environmental Baseline”

The proposed rule restores more restrictive definitions of “effects of the action” and “environmental baseline,” limiting the scope of impacts that must be evaluated during consultation. In practice, this narrowing risks excluding indirect, interrelated, and cumulative effects that are often central drivers of species decline.

Listed species are rarely affected by single actions in isolation. Habitat fragmentation, hydrologic alteration, invasive species, altered fire regimes, and climate-driven stressors frequently interact across spatial and temporal scales. A consultation framework that fails to capture these interactions undermines the ESA's precautionary and conservation-oriented intent.

The environmental baseline, in particular, is critical for contextualizing project impacts relative to existing stressors. Artificially constraining baseline conditions can obscure the incremental contribution of federal actions to ongoing decline, especially in heavily modified landscapes such as those common throughout California.

Recommendation:

We urge the Services to reinstate broader, scientifically supported definitions of “effects of the action” and “environmental baseline” that explicitly include indirect, interrelated, and cumulative impacts, consistent with contemporary ecological science and longstanding consultation practice.

2. Exclusion of Climate-Driven and Landscape-Scale Effects

The proposed rule further limits the ability of the Services to consider climate-driven effects and long-term landscape-scale trends in Section 7 analyses. This exclusion is particularly concerning given that climate change is now a dominant threat factor for many listed species, influencing habitat suitability, phenology, hydrology, and species interactions.

Climate effects are not speculative abstractions; they are empirically documented and increasingly predictable at biologically meaningful scales. Excluding these effects from consultation analyses risks systematically underestimating jeopardy and adverse modification, especially for species dependent on temperature-sensitive habitats, flow regimes, or migration corridors.

Recommendation:

We recommend that the Services explicitly require consideration of climate-driven effects, long-term habitat trends, and landscape-scale ecological processes in both effects analyses and environmental baselines when supported by the best available science.

3. Elimination of Consideration of Mitigation and Offsets

The proposed rule removes provisions allowing the Services to consider credible mitigation measures or offsets when evaluating effects of federal actions. While mitigation should never substitute for avoiding or minimizing impacts where feasible, exclusion of scientifically supported mitigation from consultation analyses is counterproductive.

In many cases, mitigation measures—such as habitat restoration, flow augmentation, timing restrictions, or connectivity improvements—are integral to reducing project impacts and improving outcomes for listed species. Ignoring these measures during consultation limits analytical accuracy and may discourage proactive conservation planning by action agencies.

Recommendation:

We urge the Services to allow consideration of mitigation or offsets when supported by clear, enforceable, and scientifically credible evidence, while maintaining rigorous standards to ensure that mitigation is effective, measurable, and durable.

4. Narrowing of the Causal Nexus for Consultation

The proposed revisions further restrict the causal nexus required to trigger consultation by emphasizing discretionary federal control and direct causation. While statutory limits on federal authority are important, overly narrow interpretations risk excluding foreseeable impacts that are functionally linked to federal actions.

Many federal programs influence outcomes through funding, approvals, authorizations, or programmatic frameworks that shape downstream activities. Artificially severing these linkages reduces the effectiveness of Section 7 as a tool for conserving species affected by complex, multi-actor decision-making processes.

Recommendation:

We recommend that the Services retain a functional, science-informed approach to causation that captures foreseeable impacts reasonably linked to federal actions, consistent with the ESA's conservation mandate.

5. Capacity and Implementation Considerations

The proposed narrowing of Section 7 analyses may appear to streamline consultation in the short term but risks increasing litigation, re-consultation, and species decline over the long term. Comprehensive, transparent analyses reduce uncertainty, improve defensibility, and support better conservation outcomes.

TWS emphasizes that effective Section 7 implementation depends not only on regulatory text but also on adequate agency capacity, staffing, and technical expertise. Regulatory changes that constrain analysis without addressing capacity challenges do not advance conservation or efficiency.

Conclusion

Section 7 consultation is one of the ESA's most important mechanisms for preventing incremental harm to listed species and critical habitat. Regulations that limit the consideration of cumulative, indirect, and climate-driven effects weaken the Act's ability to address real-world conservation challenges.

We respectfully request that the Services revise the proposed rule to restore broader, science-based effects analyses; incorporate climate and landscape-scale considerations; and allow appropriate consideration of credible mitigation measures. These changes are essential to ensuring that Section 7 consultations remain effective, transparent, and aligned with the ESA's conservation purpose.

Thank you for the opportunity to provide comments and for your continued efforts to conserve imperiled species. Please contact Scott Lindemann, Chair of the Conservation Affairs Committee, at tws.sf.conservation@gmail.com for additional information or clarification.

Sincerely,



Lauren Ross
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December 20, 2025

Public Comments Processing
Attn: FWS–HQ–ES–2025–0048
U.S. Fish and Wildlife Service
MS: PRB/3W
5275 Leesburg Pike
Falls Church, VA 22041-3803



Subject: Endangered and Threatened Wildlife and Plants; Regulations for Designating Critical Habitat (Section 4(b)(2)) (Docket No. FWS–HQ–ES–2025–0048)

Dear Sir or Madam,

The Wildlife Society (TWS) San Francisco Bay Area Chapter appreciates the opportunity to comment on the U.S. Fish and Wildlife Service’s proposed revisions to regulations governing exclusions from critical habitat designation under Section 4(b)(2) of the Endangered Species Act (ESA).

Introduction

Our Chapter represents professional wildlife biologists and conservation scientists who regularly engage in habitat assessment, recovery planning, land management, and ESA implementation. Critical habitat designation is a foundational tool for conserving listed species and ensuring that federal actions do not undermine recovery. As such, exclusions from critical habitat must be applied cautiously, transparently, and based on rigorous scientific analysis.

We are concerned that the proposed rule grants overly broad discretion to exclude areas from critical habitat designation, lacks a clear and repeatable analytical framework, and risks systematically excluding habitat essential for long-term recovery, climate adaptation, and landscape connectivity.

1. Lack of a Clear, Standardized Analytical Framework

The proposed rule expands the Secretary’s discretion to exclude areas from critical habitat based on economic impacts, social considerations, national security, and other factors, but does not establish a clear, standardized methodology for weighing the benefits of inclusion against the benefits of exclusion.

Without a repeatable analytical framework, exclusion decisions risk being inconsistent across species, regions, and time. This inconsistency reduces transparency, limits meaningful public participation, and increases the likelihood that exclusions will be driven by political or economic pressure rather than biological necessity.

Recommendation:

We request that the Service adopt a clear, standardized, and repeatable analytical framework for Section 4(b)(2) exclusion analyses that specifies how benefits of inclusion will be scientifically identified, measured, and compared against exclusion impacts.

2. Overemphasis on Economic and Administrative Costs

The proposed rule explicitly elevates economic impacts, opportunity costs, and administrative burdens—including costs associated with Section 7 consultation—as benefits of exclusion. This framing risks systematically biasing exclusion analyses toward removing habitat from designation, particularly on federal lands and in areas subject to frequent consultation.

Administrative convenience and cost avoidance are not conservation outcomes. Treating reduced consultation obligations as a benefit of exclusion undermines the purpose of critical habitat designation and weakens one of the ESA’s primary mechanisms for avoiding habitat degradation.

Recommendation:

We urge the Service to clarify that economic and administrative considerations must not outweigh demonstrable biological benefits of inclusion and that avoidance of consultation costs alone should not justify exclusion of critical habitat.

3. Risks to Climate Adaptation, Connectivity, and Future Occupancy

The proposed rule creates a pathway for excluding areas essential for climate adaptation, range shifts, and future occupancy, particularly unoccupied habitat that may become critical as environmental conditions change. This risk is especially acute given accelerating climate impacts across California and the western United States.

Many species will not persist solely within their currently occupied ranges. Recovery increasingly depends on protecting movement corridors, refugia, and habitats that support future distributional shifts. Excluding such areas from critical habitat designation undermines the ESA’s forward-looking conservation mandate.

Recommendation:

We recommend that the Service explicitly prohibit exclusion of areas that are essential for climate adaptation, habitat connectivity, or future occupancy unless the Service demonstrates, based on best available science, that exclusion will not compromise recovery.

4. “Credible Information” Trigger for Exclusion Analysis

The proposed rule allows exclusion analyses to be initiated when a proponent submits “credible information” supporting exclusion, without clearly defining evidentiary thresholds or standards. This low bar risks encouraging speculative or one-sided submissions that prioritize economic interests over conservation value.

Initiating exclusion analyses without clear standards diverts limited agency resources and increases the risk that biologically important areas will be excluded based on incomplete or biased information.

Recommendation:

We request that the Service define clear evidentiary standards for what constitutes “credible information,” including requirements for scientific support, spatial specificity, and consideration of cumulative impacts.

5. Failure to Address Cumulative Effects of Multiple Exclusions

The proposed rule does not require the Service to evaluate the cumulative conservation impacts of multiple exclusions across a species' range. Incremental exclusions, when viewed individually, may appear insignificant but collectively can undermine recovery and resilience.

Critical habitat functions at a landscape scale. Evaluating exclusions in isolation fails to capture their aggregate effect on habitat availability, connectivity, and recovery potential.

Recommendation:

We urge the Service to require documentation and analysis of the cumulative conservation impacts of multiple exclusions across a species' range as part of the Section 4(b)(2) process.

6. Transparency and Public Participation

Meaningful public participation depends on transparent reasoning, clearly articulated tradeoffs, and access to the information used in exclusion analyses. The proposed rule risks reducing transparency by allowing discretionary exclusions without clearly articulated biological justifications.

Recommendation:

We request that the Service ensure all exclusion analyses clearly document the scientific basis for inclusion benefits, exclusion benefits, and the rationale for final decisions in a manner accessible to the public and peer reviewers.

Conclusion

Critical habitat designation is a cornerstone of species conservation under the ESA. Regulations governing exclusions must be narrowly tailored, scientifically grounded, and transparent to ensure that habitat essential for recovery is not lost through incremental or economically driven decisions.

We respectfully request that the Service revise the proposed rule to establish a clear analytical framework, limit overreliance on economic considerations, protect habitat essential for climate adaptation and future occupancy, and require evaluation of cumulative impacts.

Thank you for the opportunity to provide comments and for your continued efforts to conserve imperiled species. Please contact Scott Lindemann, Chair of the Conservation Affairs Committee, at tws.sf.conservation@gmail.com for additional information or clarification.

Sincerely,



Lauren Ross
President
SF Bay Area Chapter of The Wildlife Society
twsbayarea@gmail.com

A handwritten signature in black ink, appearing to read 'Scott Lindemann', with a long horizontal flourish extending to the right.

Scott Lindemann, W.M.C., Certified Wildlife Biologist®
Conservation Affairs Committee Chair
SF Bay Area Chapter of The Wildlife Society
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The Wildlife Society
Western Section
P.O. Box 6756
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December 22, 2025

Public Comments Processing
ATTN: FWS-HQ-ES-2025-0029
U.S. Fish and Wildlife Service
MS: PRB/3W
5275 Leesburg Pike
Falls Church, VA 22041-3803

Subject: Endangered and Threatened Wildlife and Plants; Regulations Pertaining to Endangered and Threatened Wildlife and Plants (i.e. blanket rule); FWS-HQ-ES-2025-0029

Summary of Comments

On behalf of the members of the Western Section of the Wildlife Society, the Conservation Affairs Committee submits the following comments on the U.S. Fish and Wildlife Service proposal to revise regulations under the Endangered Species Act (ESA) to remove the Section 4(d) “blanket rule” option for threatened species. We caution against removal of this protection for newly listed threatened species without an alternative solution to protections while species-specific rules are promulgated including, but not limited to, increased staffing. If this rule is adopted, then a full Environmental Impact Statement should be completed due to the significant impacts as a direct response to this action.

The Basis for Comments by the Western Section of The Wildlife Society

TWS was founded in 1937 and is a non-profit professional society representing wildlife biologists, managers, and educators dedicated to excellence in wildlife stewardship through science and education. Our mission is to inspire, empower, and enable wildlife professionals to sustain wildlife populations and habitats through science-based management and conservation.

The Western Section of TWS represents over 1,200 professional wildlife biologists residing and working in Nevada, California, Hawaii, and Guam. Our members are working, retired, and student wildlife professionals with extensive experience in wildlife population research and monitoring, conducting species- and community-specific wildlife surveys, evaluating sensitive species listing, and brokering mitigation

agreements and compliance. Our collective professional training and experience provide a strong and unique basis for providing the following comments relating to the Endangered Species Act with a focus on the Blanket Rule.

Western Section Comments

The blanket rule is invaluable for interim protections for newly listed threatened species. It was enacted in 1978 to provide immediate protections from threats such as take, sale, and transport while species-specific rules were developed. If the blanket rule is removed, what will the USFWS do to ensure that threatened species receive species-specific protection immediately upon listing, without delaying the listing process? Until another solution is developed the blanket rule should remain in place, as it has almost continually since 1978. Recommended solutions include significantly increasing the level of staff and funding to meet the increased workload demands.

While the Western Section of the Wildlife Society agrees with the conclusion that species-specific rules for threatened species under the ESA are superior to the blanket rule, we strongly disagree with the actions of this proposed regulation change. We oppose inserting "... that were added to the List of Endangered and Threatened Wildlife at § 17.11(h) on or prior to [EFFECTIVE DATE OF THE FINAL RULE], " into CFR §17.31 Prohibitions and ask that this proposal is rescinded.

We also request that consideration of economic impacts be removed from the determination of species-specific rules (insertion of § 17.31 (d)). The ESA was enacted to prevent species extinctions with the goal of de-listing threatened and endangered species, economic impacts cannot be considered to the extent of knowingly preventing a species from recovering. If economic impacts are not removed, then more transparency must be provided regarding how conservation measures will be implemented to attain species recovery within the economic limitations.

Consistency with Endangered Species Act implementation between National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) is admirable, but not a valid argument for why the blanket rule should be removed. Rather, if consistency is truly the aim, then we recommend that NMFS adopt the blanket rule.

Finally, if USFWS moves forward with the decision to rescind the blanket rule, an Environmental Impact Statement (EIS) must be prepared pursuant to the National Environmental Policy Act (NEPA). Withdrawing the blanket rule will in aggregate remove protections for future listed threatened species, which will result in significant impacts as a direct result of this decision. These impacts may be in the form of delayed listing while species-specific rules are developed, species being listed as threatened but having no protection because species-specific rules were not developed at the time of listing, etc. Under both of these scenarios take of the species or their habitat may continue,

decreasing the likelihood of recovery, which would have been prevented should the blanket rule remain in place. Moreover, requiring USFWS officials to examine protections for threatened species on a case-by-case basis will put more burden on an already-overburdened agency and slow listing generally, another significant environmental impact. If USFWS goes through with this proposal, we have every reason to expect more species will require endangered protections and progress to extinction instead of recovery.

Thank you for the opportunity to provide comments on the Endangered Species Act regulations, particularly use of the blanket rule. We appreciate your consideration of these comments. Please direct questions or requests for additional information regarding The Western Section or our expertise relating to the Endangered Species Act, particularly the blanket rule, to Lisa Fields, The Western Section Conservation Affairs Committee Chair, at the letterhead address or conservation@twswest.org.

Sincerely,

Conservation Affairs Committee
The Wildlife Society, Western Section



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December 22, 2025

Public Comments Processing
ATTN: FWS-HQ-ES-2025-0048
U.S. Fish and Wildlife Service
MS: PRB/3W
5275 Leesburg Pike
Falls Church, VA 22041-3803

Subject: Endangered and Threatened Wildlife and Plans; Regulations for Designating Critical Habitat; Docket No. FWS-HQ-ES-2025-0048, FXES1111090000-256-FF09E23000

Summary of Comments

On behalf of the members of the Western Section of the Wildlife Society, the Conservation Affairs Committee submits the following comments on the proposed changes to regulations for designating critical habitat under the Endangered Species Act. We request a clear, repeatable analytical framework be presented for weighing exclusion impacts, including how “benefits of inclusion” will be scientifically measured; the Secretary be required to publish rationale and supporting science for all exclusion decisions; and that exclusion analyses include explicit disclosure of uncertainties in both economic projections and ecological consequences.

The Basis for Comments by the Western Section of The Wildlife Society

TWS was founded in 1937 and is a non-profit professional society representing wildlife biologists, managers, and educators dedicated to excellence in wildlife stewardship through science and education. Our mission is to inspire, empower, and enable wildlife professionals to sustain wildlife populations and habitats through science-based management and conservation.

The Western Section of TWS represents over 1,200 professional wildlife biologists residing and working in Nevada, California, Hawaii, and Guam. Our members are working, retired, and student wildlife professionals with extensive experience in wildlife population research and monitoring, conducting species- and community-specific wildlife surveys, evaluating sensitive species listing, and brokering mitigation agreements and compliance. Our collective professional training and experience

provide a strong and unique basis for providing the following comments relating to the designation of critical habitat under the Endangered Species Act.

Western Section Comments

Clarifying how the U.S. Fish and Wildlife Service (FWS) implements the Endangered Species Act (ESA) is a worthy goal. Nonetheless, we have significant concerns about the proposed approach. The preamble and regulation for considering economic impact and other factors in critical habitat designation contain several ambiguities that the FWS should clarify. In particular, the FWS should affirm that they intend to consider not only economic impacts that support excluding areas from critical habitat but also those that support including areas in critical habitat. Although the ESA's mandate is not conditioned on a listed species' economic value, the FWS must not ignore any such economic value when considering critical habitat. To do otherwise would provide a lopsided picture of "economic impact" that ignores conservation's benefits.

We recommend that the FWS provide additional specificity regarding the framework for evaluating the "benefits of exclusion" versus the "benefits of inclusion" under ESA § 4(b)(2) (16 U.S.C. § 1533(b)(2)) and 50 C.F.R. § 424.19. The regulation should clearly identify the analytical lens and spatial and temporal scale of review, and outline the procedural sequence, including the evaluation of mitigation measures, before concluding that exclusion of otherwise designated critical habitat is warranted. The current language states that "the Secretary will consider impacts at a scale that the Secretary determines to be appropriate and that impacts may be qualitatively or quantitatively described," as found in proposed 50 C.F.R. § 424.12(c)(2)(i), lacks sufficient transparency. While flexibility in scale may be appropriate to accommodate species-specific circumstances, the regulation should explicitly require that scale be determined based solely on the species' biological needs, rather than external or non-biological inputs. Furthermore, under proposed paragraph (c)(2)(ii), the Secretary must document a decision not to undertake a 4(b)(2) exclusion analysis; however, there is no corresponding requirement to document the rationale when such an analysis *is* undertaken. We urge that language be added requiring the Secretary to record both the *decision* and the *reasoning* for initiating or forgoing a 4(b)(2) exclusion analysis, to ensure full accountability and alignment with statutory intent.

ESA 4(b)(2) requires the FWS to designate critical habitat "after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat." 16 U.S.C. § 1533(b)(2). The FWS "may" exclude an area if "the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat," unless exclusion would result in species extinction. *Id.* This option to exclude habitat is discretionary on the part of the FWS. In the proposed regulation, the FWS seeks to commit itself under

certain circumstances to engage in the discretionary analysis of weighing benefits of exclusion and inclusion against one another. The regulation also provides a “non-exhaustive list of categories of potential impacts that [the FWS] will consider.” 90 Fed. Reg. 52,594. The proposed regulation would require the FWS to conduct such an analysis whenever a “proponent of excluding a particular area . . . has presented credible information regarding the existence of a meaningful economic or other relevant impact supporting a benefit of exclusion.” *Id.* at 52,599. The proposed regulations further state that in conducting its benefit-weighting analysis, the FWS “will give weight to those benefits consistent with the expert or firsthand information . . . unless the Secretary has knowledge or material evidence that rebuts that information.” *Id.* The FWS then states that “[n]onbiological impacts” may be outside the scope of their expertise. “When analyzing the benefit of including or excluding any particular area based on economic impact or other relevant impacts . . . the Secretary will weigh such impacts relative to the conservation value of the area.” *Id.*

The proposed rule dramatically expands the FWS burden to conduct such analyses in a way that contravenes the purpose of the ESA. The FWS already struggles to meet demands to list species and designate critical habitat in compliance with statutory deadlines. By committing to conduct a benefit-weighting analysis any time a member of the public offers “credible information,” the FWS opens themselves up to having to conduct this analysis for almost any critical habitat designation. This commitment will mire critical habitat designation in further delays and undermine the ESA’s commitment to recovering species. It also inverts the balance of ESA 4(b)(2), which makes clear that although including habitat in a designation may be mandatory, excluding it for economic reasons or otherwise is always discretionary. The ESA clearly puts a thumb on the scale toward inclusion. The proposed regulations, by contrast, bars critical habitat inclusion unless the FWS can prove that benefits of listing outweigh costs. Therefore these proposals should be rescinded.

The proposed rule also threatens to give nonbiological interests in exclusion an outsized weight in the benefit-weighting analysis. Although the FWS suggests that they will “give weight” to such benefits because they are “outside its expertise.” For one thing, it is far from evident that the FWS lacks expertise regarding such interests, or has the capacity to gain such expertise if truly lacking. The FWS has significant experience designating critical habitat and observing the effects on local communities and industry. In fact, the FWS likely has insight into designation effects that affected members of the public lack. There is no evidence that a member of the public, in general, holds expertise above that of the FWS. In any event, it is unclear what the FWS means when it says it will “give weight” to such nonbiological interests in exclusion and other similar interests “outside the scope” of its expertise. How will FWS determine credibility if the argument is outside their expertise? Will credible allegations of even minor economic impact trigger an

analysis? Will benefits of exclusion systematically receive “bonus” weight against benefits of inclusion? Without more details and guardrails, the proposed regulations threaten to put a heavy thumb on the scale in favor of excluding habitat which is antithetical to the purpose of the ESA to bring about recovery of species. This bias subverts the ESA’s presumption in favor of designating critical habitat. The bias also contravenes the Administrative Procedure Act (APA), which requires that agencies engage in rational decision-making, not analyses that give unjustified emphasis to one set of interests while discounting another.

The FWS should clarify that when it considers economic impact, it will consider not only economic impacts in favor of exclusion, but those in favor of inclusion. Executive authority establishes that agencies engaging in economic analyses should attempt to account for all effects of a proposed regulation (Off. of Mgmt. & Budget, OMB Circular A-4, Regulatory Analysis; Sept. 17, 2003). Moreover, executive authority makes clear that ecosystem services have economic value (Off. of Info. & Regul. Affs., Off. of Mgmt. & Budget, Draft for Public Review, Guidance for Assessing Changes in Environmental and Ecosystem Services in Benefit-Cost Analysis; 2023). This includes benefits additional to species conservation, such as services that come from ecological benefits. For example: preventing erosion, contributing to pollination, and nutrient cycling, to name a few. Moreover, conserving wilderness can support recreation and contribute to the tourism industry. It is also important that FWS not neglect that conservation of the species in question has economic value. Depending on FWS’s approach to weighing benefits, the proposed approach risks neglecting that conserving a species has real economic benefit, including ecosystem services and Americans’ willingness to pay to avoid species extinction. To exclude these benefits would run afoul of the APA’s mandate to consider all relevant information and executive authority to the same effect. The result would be a lopsided analysis in favor of exclusion.

The inclusion of “avoidance of administrative or transactional costs associated with the consultation process” as a factor in exclusion determinations under ESA § 4(b)(2) is inappropriate. These costs are inherent to the statutory consultation process and should not be considered a valid basis for excluding critical habitat. If these costs are determined to be disproportionately burdensome, the appropriate remedy is to re-evaluate and improve the efficiency of the consultation process, rather than to diminish habitat protections. Moreover, consultation serves an important function by facilitating collaborative solutions that benefit both listed species and project proponents, consistent with the intent of the ESA.

Thank you for the opportunity to provide comments on the proposed changes to regulations for designating critical habitat under the Endangered Species Act. We appreciate your consideration of these comments. Please direct questions or requests

for additional information regarding The Western Section or our expertise relating to the Endangered Species Act to Lisa Fields, The Western Section Conservation Affairs Committee Chair, at the letterhead address or conservation@twc-west.org.

Sincerely,

Conservation Affairs Committee
The Wildlife Society, Western Section



The Wildlife Society
Western Section
P.O. Box 6756
Albany, CA 94706
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December 22, 2025

Public Comments Processing
Attn: FWS-HQ-ES-2025-0044
U.S. Fish and Wildlife Service
MS: PRB/3W
5275 Leesburg Pike
Falls Church, VA 22041-3803

Subject: Endangered and Threatened Wildlife and Plants; Interagency Cooperation Regulations (Docket No. FWS-HQ-ES-2025-0044)

Summary of Comments

On behalf of the members of the Western Section of the Wildlife Society, the Conservation Affairs Committee submits the following comments on the United States Fish and Wildlife Service and the National Marine Fisheries Service (collectively, the Services) proposal to revise regulations for Section 7 of the Endangered Species Act of 1973 (ESA). We request the inclusion of broad, scientifically supported definitions that include indirect and cumulative impacts; inclusion of mitigation or offsets when supported by clear, reliable scientific evidence; and requiring that climate-driven effects, landscape-scale habitat trends, and cumulative threats be incorporated into all baseline and effects analyses.

The Basis for Comments by the Western Section of The Wildlife Society

TWS was founded in 1937 and is a non-profit professional society representing wildlife biologists, managers, and educators dedicated to excellence in wildlife stewardship through science and education. Our mission is to inspire, empower, and enable wildlife professionals to sustain wildlife populations and habitats through science-based management and conservation.

The Western Section of TWS represents over 1,200 professional wildlife biologists residing and working in Nevada, California, Hawaii, and Guam. Our members are working, retired, and student wildlife professionals with extensive experience in wildlife population research and monitoring, conducting species- and community-specific wildlife surveys, evaluating sensitive species listing, and brokering mitigation agreements and compliance. Our collective professional training and experience

provide a strong and unique basis for providing the following comments relating to the Endangered Species Act.

Western Section Comments

Definitions § 402.02

The explanation for removing “but that are not part of the action” from the definition of *Effects of the Action* does not fully address the issue, ignoring the scientifically supported arguments. While conceptually the content has not changed since it is incorporated by reference to reinstatement of § 402.17, it diminishes the ability for indirect, cumulative, and interrelated impacts to be considered. We request that for clarity and completeness the phrase “but that are not part of the action” is retained in addition to the reference to § 402.17.

Proposed Changes to Reasonable and Prudent Measures

The proposed removal of the text “and may include measures implemented inside or outside of the action area that avoid, reduce, or offset the impact of incidental take.” from Section 402.14(i)(2) as well as the proposal to completely remove Section 402.14(i)(3) should be rescinded. Retaining the ability to mitigate impacts outside of the project area is a crucial tool for meeting conservation goals of listed species. Removal of this language could preclude effective, yet simple, acts such as noise, sound, or movement barriers that would minimize or avoid take but would be more effective if placed outside the project area instead of inside. Or it could preclude broader efforts such as offsite habitat restoration which would be more beneficial for species recovery than restoration of an onsite area. Retaining this language would give the Services the flexibility necessary to develop measures, through consultation, that are scientifically informed as the most reasonable to succeed. Narrowing staff ability to do this will negatively impact recovery outcomes.

Proposed Reinstatement of Other Provisions

Reinsertion of Section 402.17 can provide clarification in the regulations, however we have concerns that the parameters proposed for what can be considered “reasonably certain to occur” is too narrow and will ultimately lead to harm, which is antithetical to the best reading of the ESA. The proposed insertion of Section 402.17(a)(4) regarding other governmental administrative discretion should be rescinded to meet the best interpretation of the ESA. While uncertainty in remaining discretion from other governments provides leeway in outcomes, that is the intent of consultation, to communicate intents and determine the best path forward. Instead of this discretion uncertainty being a reason for inaction it should be a reason for further communication that leads to informed action.

We also request reconsideration for insertion of Section 402.17(b)(4). Limiting analysis of the consequences of the proposed action solely to activities the Services have the ability to prevent due to statutory limitations is shortsighted. Under the ESA, it is the responsibility of all Federal departments and agencies to conserve endangered and threatened species. In order to fulfil this policy, the Services must analyze the full breadth of knowledge regarding potential impacts to a species and then take regulatory action based upon their authority. This approach is critical for assessing cumulative impacts.

Finally, for insertion of Section 402.17 we have concerns regarding Section 402.17(b)(5) and the lack of clarity. We request edits to the text. As currently written it precludes assessment when a “consequence would occur regardless of whether the proposed action goes forward.” On the surface this is clear, but in practice it ignores the implications of scale or magnitude. Clarifications are requested to include a statement regarding scale and magnitude. The consequences should be analyzed at a scale and magnitude commensurate with the proposed action. If the proposed action will exacerbate, amplify, speed up, etc. the consequences then that should be included in the analysis of effects of the action.

Thank you for the opportunity to provide comments on the Endangered Species Act. We appreciate your consideration of these comments. Please direct questions or requests for additional information regarding The Western Section or our expertise relating to the Endangered Species Act to Lisa Fields, The Western Section Conservation Affairs Committee Chair, at the letterhead address or conservation@twswest.org.
Sincerely,

Conservation Affairs Committee
The Wildlife Society, Western Section



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December 22, 2025

Public Comments Processing
ATTN: FWS-HQ-ES-2025-0039
U.S. Fish and Wildlife Service
MS: PRB/3W
5275 Leesburg Pike
Falls Church, VA 22041-3803

Subject: Endangered and Threatened Wildlife and Plants; Listing Endangered and Threatened Species and Designating Critical Habitat; Docket No. FWS-HQ-ES-2025-0039, FXES11110900000-256-FF09E23000

Summary of Comments

On behalf of the members of the Western Section of the Wildlife Society, the Conservation Affairs Committee submits the following comments on the proposed changes to regulations for listing, reclassifying, and delisting endangered and threatened species and designating critical habitat under the Endangered Species Act (ESA). To uphold transparency and the ESA's mandate, we respectfully request that the Services reject this proposed rollback to the 2019 language and retain the 2024 rule. Listing decisions should be required to be based solely on best scientific and commercial data; "foreseeable future" should be defined to ensure long-term climate and habitat threats are included in analysis; delisting criteria should be recovery-based with measurable, science-based recovery benchmarks; and long-term climate and ecological models should be explicitly recognized as components of best available science.

The Basis for Comments by the Western Section of The Wildlife Society

TWS was founded in 1937 and is a non-profit professional society representing wildlife biologists, managers, and educators dedicated to excellence in wildlife stewardship through science and education. Our mission is to inspire, empower, and enable wildlife

professionals to sustain wildlife populations and habitats through science-based management and conservation.

The Western Section of TWS represents over 1,200 professional wildlife biologists residing and working in Nevada, California, Hawaii, and Guam. Our members are working, retired, and student wildlife professionals with extensive experience in wildlife population research and monitoring, conducting species- and community-specific wildlife surveys, evaluating sensitive species listing, and brokering mitigation agreements and compliance. Our collective professional training and experience provide a strong and unique basis for providing the following comments relating to the listing regulations of threatened and endangered species and critical habitat designation under the Endangered Species Act.

Western Section Comments

The U.S. Fish and Wildlife Service and National Marine Fisheries Service (Services) intent to maintain clarity in implementing the Endangered Species Act (ESA) is commendable, but we disagree with the conclusion that this requires reverting to the rescinded 2019 text. Rather, we posit that the current (i.e. 2024) text best meets these standards and the intent of the ESA. The proposed reversion introduces significant concerns that the Services should address. Specifically, reaffirm that listing decisions remain based solely on biological considerations, as Congress intended, and clarify that any economic analysis is optional and will not influence listing determinations. In addition to our scientific concerns, we submit comments regarding the Services lack of compliance with the Administrative Procedure Act (APA).

Reaffirm Listing Decisions Based Solely on Biological Considerations

The ESA clearly intends that listing decisions be “based solely on biological considerations” (83 FR 35194, 2018). The 2024 rule reflects this principle and should be retained, therefore no changes should be made to the language of § 424.11(b).

Introducing economic considerations into the listing process, as proposed in this notice, whether mandatory or optional, contradicts the ESA’s purpose and will unnecessarily burden the Services, which already struggle to keep pace with listing requests. Section 2(a) of the ESA states that species have been rendered extinct “as a consequence of economic growth and development untempered by adequate concern and conservation.” Congress deliberately excluded economic factors from listing decisions to prevent this very outcome. If the Services intend to revert to the 2019 approach, they must clarify that any economic analysis is optional and will not influence or delay listing determinations. This transparency is essential to uphold the ESA’s integrity and Congress’ intent. Regulations should reflect and strengthen this concept, not undermine it. These same economic factors that are being proposed to be considered are contributing to the decline of many species protected under, or proposed for listing

under, the ESA. For example, the coastal California gnatcatcher (*Polioptila californica californica*) was initially listed due to habitat loss from urban and agricultural development (58 FR 16742), which are some of the so called economic factors this proposal is asking is to be used to deny listing and/or designation of critical habitat. This is clearly contrary to the intent of the ESA.

The ESA's foundational policy directs all federal departments and agencies to conserve endangered and threatened species without caveats for economic considerations. Maintaining regulations that reflect this principle is essential for transparency, consistency, and the continued protection of imperiled species. For these reasons, we urge the Services to retain the 2024 rule and reject the proposed reversion to the 2019 regulatory text.

Foreseeable Future ((424.11 (d)

We are also concerned with the proposal to reinsert the 2019 terminology for “foreseeable future.” This language places undue emphasis on “determining” instead of “predicting”, creating ambiguity in what constitutes accepted underlying data. Use of predictive models must remain supported tools for determining plausible outcomes into the foreseeable future. When paired with the proposed changes regarding economic impacts, this approach could significantly weaken protections for species and their critical habitat. If the intent is to clarify that both threats and species’ responses must be considered together, the Services are best served by retaining the current text “*The foreseeable future extends as far into the future as the Services can make reasonably reliable predictions about the threats to the species and the species’ responses to those threats.*” This ensures that critical models, such as climate, habitat, and species response projections, remain viable tools. Further, we request the Services explicitly recognize long-term climate and ecological models as part of best available science.

Factors Considered in Delisting Species

The ESA requires “objective, measurable criteria” for delisting under Section 4(f)(1)(B)(ii). These criteria ensure that species are removed from the list only after recovery, consistent with the Act’s provisions. The phrase “sufficient period of time” should remain flexible to account for species-specific circumstances.

Section 424.11(e)(2) should retain the language “no longer” to acknowledge that conditions change. By removing this language, as proposed, it implies error on the part of the Services in the original listing, not a change in status of the listed entity. In Section 424.22(e)(3) the insertion of “statutory” to reaffirm how “species” is defined is a beneficial insertion which we support. However, it would also be beneficial to include a reference to the statute (ESA Section 3 Definitions 16).

Criteria for Designating Critical Habitat

Many species listed under the ESA are in peril due to a lack of suitable habitat, therefore designating critical habitat is essential for meeting the intent of the ESA. We urge the Services to clarify and improve the proposed “not-prudent” framework for designating critical habitat (Section 424.12(a)(1)). As written, the preamble discussion is confusing and the changes could be presented more clearly. The proposed revision appears to suggest that designating critical habitat is “not-prudent” when threats to a species’ habitat that lead to E/T status stem solely from causes that cannot be addressed by management actions identified in section 7(a)(2); however, the Services do not explain what circumstances meet this threshold. It is difficult to accept that there are situations in which no management, restoration, or adaptive strategy can even partially mitigate harm or improve conditions. Without examples, a “not-prudent” determination risks becoming a broad exemption rather than a rare, well-justified outcome. We welcome the statement that “not-prudent” circumstances will remain rare, but request explicit criteria and case studies to ensure consistent, transparent application and to avoid foreclosing conservation opportunities.

Strengthening the language in Section 424.12(b)(2) to prioritize designation of currently occupied habitat is beneficial and supported. However, the Services assertion that a “currently uninhabitable area for species at the time of listing” cannot be “essential” ignores the underlying scientific basis for listing - population numbers. For a species to recover it must increase in the number of individuals, as the population increases it needs to expand into suitable habitat that was unoccupied at the time of listing. In addition, there are many instances in which a habitat may have one of the important physical or biological features essential to the species but needs management or restoration to possess the others. Such a habitat might be essential if the species lacks sufficient habitat; it is the best starting point the Services have to work with. To say otherwise would force the Services to violate their mandates to conserve endangered and threatened species. The Services would list species, know their habitat was inadequate, and yet be compelled to watch the population decline because no perfect “move-in habitat” existed at the time of listing.

With respect to unoccupied areas, we agree that occupied habitat should be prioritized and evaluated first, especially given current staffing constraints. However, we oppose limiting evaluation of unoccupied areas to only those cases where occupied habitat is inadequate. Unoccupied areas should always be evaluated and, where warranted, conserved after occupied areas. In an ideal scenario, consistent with the 2016 revisions, occupied and unoccupied areas would be assessed concurrently to support comprehensive, forward-looking conservation. The claim that the Services have “inappropriately designated” overly expansive unoccupied critical habitat is not supported; habitat loss remains the leading threat for most species, and climate-driven

range shifts demand proactive conservation of all habitats that can reasonably support recovery. The ESA's implementing text should reflect modern ecological realities, not the narrower context of 1973, by recognizing that preserving potential habitat is essential to facilitate species' adaptation to changing conditions. While we do not object to language requiring that "the Secretary must make a determination... that the area contains one or more of those physical or biological features essential to the conservation of the species," we oppose imposing a higher evidentiary bar for unoccupied areas than for occupied areas. Species are often absent from suitable habitat because of factors unrelated to habitat quality (e.g., low population numbers, barriers to dispersal, historical disturbance, or stochastic events). Additionally, cryptic species and detection challenges mean that some areas classified as "unoccupied" may in fact harbor undetected individuals; imposing a higher bar assumes certainty that is rarely achievable in field biology and risks overlooking essential habitat. For example, California red-legged frogs (*Rana draytonii*) often tote down into undercut banks or in between cobble and vegetation, making their camouflaged bodies difficult to identify from visual surveys; this does not however, preclude their presence at a location. Developing areas with the assumption that they are unoccupied is naive to biology and can further harm species. Holding unoccupied areas to a higher standard would unnecessarily constrain conservation tools and impede recovery.

Lack of Compliance With Administrative Procedure Act (APA)

The Services have not provided a transparent, reasoned explanation for these proposed changes or a complete and transparent analysis (5 USC Section 706(2)(D)). The proposed rule asserts that reverting to the 2019 regulatory text "best aligns with the Act" based on "the language of the Act and recent case law," yet provides no substantive explanation. Further, the rationale provided is misleading. Under the APA, agencies must engage in rational decision-making and cannot simply assert conclusions without analysis. The absence of reasoning denies stakeholders the opportunity to provide meaningful feedback on the agency's legal interpretation. Finally, the reasoning provided is misleading and confusing, contrary to the Plain Writing Act. For example, when describing the proposed changes to § 424.11(e) in the Preamble comparisons are made between the three sub-sections of the 1984 language and the 2019 language, but what is being proposed for change is the 2024 language which has four sub-sections. The Services must justify their proposed changes against the current regulations to be transparent, it is the current regulations that would be changed, not the 1984 regulations, should this notice be implemented.

Thank you for the opportunity to provide comments on the proposed changes to regulations for listing endangered and threatened species and designating critical habitat under the Endangered Species Act. We appreciate your consideration of these comments. Please direct questions or requests for additional information regarding The

Western Section or our expertise relating to the proposed ESA changes to Lisa Fields,
The Western Section Conservation Affairs Committee Chair, at the letterhead address
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Conservation Affairs Committee
The Wildlife Society, Western Section