



NATIONAL ASSOCIATION OF STATE FORESTERS

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December 22, 2025

Public Comments Processing
US Fish and Wildlife Service
5275 Leesburg Pike
Falls Church, VA 22041-3803

ATTN: FWS-HQ-ES-2025-0048 - Regulations for Designating Critical Habitat
MS: PRB/3W

ATTN: FWS-HQ-ES-2025-0029 - Regulations Pertaining to Endangered and Threatened Wildlife and Plants
MS:PRB/3W

ATTN: FWS-HQ-ES-2025-0044 - Interagency Cooperation Regulations
MS:PRB/3W

ATTN: FWS-HQ-ES-2025-0039 - Listing Endangered and Threatened Species and Designating Critical Habitat
MS: PRB/3W

Dear Sir/Madam:

This comment letter addresses four separate Endangered Species Act (ESA) proposed rules, as referenced above, published in the Federal Register on November 19, 2025. Two of the proposed rules are joint between the Department of the Interior US Fish and Wildlife Service (FWS) and the Department of Commerce's National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) (the Services) and two are specific to the FWS (the Service).

The National Association of State Foresters (NASF) represents the directors of forestry agencies in all 50 states, five U.S. territories, three nations in compact of free association with the U.S., and the District of Columbia. These agencies protect and help manage over 500 million acres of forests across the U.S., together with local governments, individuals, and families. They also regularly contribute to the management and protection of federal forest lands.

Forests provide a habitat for a host of rare, threatened, or endangered species of plants and animals. They also ensure important water quality and quantity requirements for aquatic species. That being the case, NASF has a significant interest in seeing that the ESA is implemented in a way that efficiently and effectively protects species of concern. Attached is an NASF position statement entitled Improving the Effectiveness of the Endangered Species Act that was adopted by the membership in 2020.

Executive Director
Jay Farrell

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In 2023, we commented on proposed rule changes under the Biden Administration that we felt diminished the efficacy of ESA implementation (see attached). We are pleased to see that these new proposals reverse many of the changes that were ultimately finalized in 2024. We feel those changes expanded federal reach that created unnecessary complexity and departed from the statutes' clear language. NASF supports the positive changes in these proposals that protect species through clear, consistent and lawful standards that also respect the livelihoods of Americans who depend on our land and resources.

FWS-HQ-ES-2025-0048 - Regulations for Designating Critical Habitat

NASF supports the Services' joint proposal to restore the 2019 regulatory language for designating critical habitat, protecting species through clear science-based standards. We support the recognition that Section 4(b)(2) expressly requires critical habitat designations to be made based on the best scientific data available and that the second section of 4(b)(2) "provides the Secretary the authority to exclude any particular area from a critical habitat designation if the benefits of exclusion outweigh the benefits of inclusion for that area, so long as excluding it will not result in the extinction of the species."

In particular, we appreciate the proposal's recognition of the value of Conservation Plans, agreements and partnerships (i.e. - habitat conservation plan, safe harbor agreement, candidate conservation agreement with assurances, conservation benefit agreement, etc) and the benefits of potentially excluding those covered lands from critical habitat to foster more voluntary conservation activities among private landowners. As laid out in our attached position paper, it is our on-the-ground experience that private landowners often fear the repercussions an endangered species listing may have on the use of their property. This fear often disincentivizes (1) monitoring for and reporting listed populations and (2) managing their land in ways that help protect listed species. The more landowners are at odds with ESA, the less access biologists and land managers have to listed species on private lands. Recognition that incentives work better than penalties for ESA implementation is important. Avenues like this proposal help landowners have confidence that their participation in voluntary monitoring and conservation agreements can help them avoid a critical habitat designation on their property.

FWS-HQ-ES-2025-0044 - Interagency Cooperation Regulations

We support the Services' joint proposal to revise portions of regulations for section 7 of the ESA. The proposed revisions confirm the Services' application of statutory requirements for interagency cooperation.

FWS-HQ-ES-2025-0029 - Regulations Pertaining to Endangered and Threatened Wildlife and Plants

We support the proposal to remove the re-instated 2024 "blanket rule" for protecting newly listed threatened species pursuant to section 4(d) of the Act. We agree that Congress in the ESA made

clear a distinction between endangered and threatened status, as well as its intent for the Service to determine what protections are needed for threatened species on a species-by species basis.

Retaining the “blanket rule” policy implies that there is no difference in the status of endangered versus threatened species. We believe that finalizing a species-specific 4(d) rule concurrent with a listing or reclassification determination adds efficiency, predictability, and transparency to the rulemaking process for the public and to the regulated community because it connects the Service’s analysis of threats that have a negative impact on the species to measures designed to provide for the conservation of the species.

Further, we agree with the proposal’s recognition that removing the “blanket rule” removes redundant permitting requirements, facilitates implementation of beneficial conservation actions, and makes better use of FWS personnel and fiscal resources.

FWS-HQ-ES-2025-0039 - Listing Endangered and Threatened Species and Designating Critical Habitat

NASF supports the following elements of this regulatory proposal that return to the 2019 promulgated regulations. We support reverting back to the 2019 language for the criteria definition of delisting a species. The three clear criteria are (1) the species is extinct, (2) the species does not meet the definition of an endangered species or a threatened species, and (3) the listed entity does not meet the definition of a species. We agree that including mention of recovery in these regulations is not necessary, nor is it necessarily helpful. The three simple criteria provide clarity and certainty to forest landowners and natural resource professionals

We support reverting back to the 2019 language on non-prudent determinations of critical habitat, while recognizing this is a rarely used part of the law. In particular, we agree that designation of critical habitat may not be prudent when threats to a species’ habitat that “stem solely from causes that cannot be addressed by management actions identified in a section 7(a)(2) consultation”.

We support the 2019 rule for designating critical habitat and prioritizing or sequencing how occupied and unoccupied areas should be considered when designating critical habitat. The 2019 rule clearly uses a two-step process for designating occupied areas over unoccupied areas. Further, we support the Secretary only considering unoccupied areas be used when critical habitat is limited to adequately ensure the conservation of the species.

Reverting to the 2019 language ensures that the Secretary must determine if both requirements to designate unoccupied areas as critical habitat are met. Final determination of critical habitat must meet reasonable certainty that both the area will contribute to the conservation of the species, and the area contains one or more of the physical or biological features essential to the conservation of the species.

We particularly agree that this change aligns the regulations with the best meaning of the Act, particularly related to a recent Supreme Court decision related to forest landowners and the ESA,

holding that an area must be habitat before an area can meet the definition of critical habitat (Weyerhaeuser Company v. United States Fish & Wildlife Service).

Conclusion

NASF is pleased to see that most of these proposed changes in this ESA Federal Register Notice revert back to the 2019 language that provided more certainty and common sense. If finalized, this will give forest landowners and natural resource professionals across the nation a better ability to manage our nation's forest land for the many benefits it provides.

We appreciate this opportunity to comment and would be happy to further clarify our concerns.

Sincerely,

Jason Hartman
President, National Association of State Foresters
Kansas State Forester