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U.S. Fish and Wildlife Service (FWS)
1849 C St., NW
Washington, DC 20240

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<https://www.regulations.gov/document/FWS-HQ-ES-2025-0034-0001>

Subject: **Rescinding the Definition of Harm under the Endangered Species Act**

Calusa Waterkeeper is writing in strong opposition to the proposed rule to rescind the regulatory definition of “harm” under the Endangered Species Act (ESA). The 1981 definition, which reasonably includes “significant habitat modification or degradation that actually kills or injures wildlife,” has long served as a necessary and science-based tool for protecting imperiled species. Removing this definition threatens not only wildlife across the country and our coastal waters but also the ecosystems and species of deep importance to my community in Southwest Florida—particularly those connected to the Caloosahatchee River and its watershed.

The Caloosahatchee River is a vital ecological corridor that supports a wide array of wildlife, including several ESA-listed species such as the Florida manatee (*Trichechus manatus latirostris*), the smalltooth sawfish (*Pristis pectinata*), and the wood stork (*Mycteria americana*). These species are highly sensitive to habitat quality and availability, especially in the face of ongoing pressures such as nutrient pollution, altered freshwater flows from Lake Okeechobee, and extensive shoreline development - all of which are exacerbated by climate change.

Without a clear and enforceable definition of “harm” that encompasses habitat degradation, regulatory agencies may be left without the authority to intervene when upstream actions diminish habitat quality downstream. For example, high-volume freshwater discharges into the Caloosahatchee from Lake Okeechobee—often laden with nutrients—have led to harmful algal blooms, seagrass loss, and salinity imbalances in the estuary. These conditions have resulted in mass manatee die-offs in recent years, particularly along Florida’s east coast, but with ecological parallels and impacts on Florida’s west coast as well.

In this context, eliminating the definition of “harm” would significantly impair the ability of agencies to hold actors accountable when their actions cause indirect but lethal outcomes to ESA-listed species. It is clear that habitat loss and degradation remain among the primary drivers of species decline. The harm standard recognizes this scientific reality and ensures that threats to species’ survival are addressed comprehensively, not only in cases of direct injury through take but through indirect injury through harm to habitat.

Moreover, the removal of this definition could hinder restoration efforts. In Southwest Florida, millions of dollars are being invested in Everglades restoration and watershed projects to improve freshwater flow, water quality, and habitat resilience. Without a strong regulatory framework that includes protections against habitat harm, these efforts could be undermined by unchecked development and short-sighted land use practices and harmful in-water development (e.g., dredging shallow water critical

habitat needed for sawfish nursery areas in the Caloosahatchee River for more housing development associated marinas).

The rescission is not only scientifically unsound but legally unnecessary. Courts have upheld the existing definition of harm for habitat under the ESA for decades, most notably by the Supreme Court in 1995. The safeguard of protecting against harm for habitat under the ESA is well understood by state agencies, conservation partners, and federal regulatory action agencies such as the USACE. Removing it now would create confusion, delay implementation of critical conservation actions, and ultimately put listed and unlisted species alike at greater risk.

Finally, the definition of critical habitat under the ESA affords legal protections of discrete physical and biological features in the range of listed-species that are essential for their survival AND recovery: "...the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features (1) essential to the conservation of the species and (2) which may require special management considerations or protection, as well as specific areas outside the geographical area occupied by the species...[that are] essential for the conservation of the species (16 U.S.C. 1532(5)(A))." Critical habitat for smalltooth sawfish in the Caloosahatchee River provides a significant amount of the nursery habitat for the species. This critical habitat also overlaps with Essential Fish Habitat (EFH) listed under the Magnuson-Stevens Fishery Conservation and Management Act. EFH includes those waters and substrate necessary for fish spawning, breeding, feeding, or growth to maturity. Many important non-listed recreational fish species including snook, redfish, tarpon, largemouth bass, and spotted seatrout benefit from EFH protections in the Caloosahatchee River. Overlapping protections of Critical Habitat and Essential Fish Habitat ensure that a sustainable balance is maintained between coastal development, agriculture, and ensuring viable ecosystem services are provided for the entire community.

Calusa Waterkeeper urges the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Association to abandon this proposed rule and retain the longstanding definition of "harm." The strength of the ESA lies in its proactive approach—protecting both species and the ecosystems they depend on. To weaken those protections by narrowing the interpretation of harm to habitat is to ignore decades of scientific consensus and conservation progress under the ESA. Harm and Take under the ESA must not be conflated to mean the same thing: harming habitat adversely affects listed species and can lead to adverse modification of their habitat which in turn can jeopardize the future survival and recovery of listed species.

Sincerely,

Joe Cavanaugh
Calusa Waterkeeper