

United States Senate

WASHINGTON, DC 20510

May 5, 2025

The Honorable Doug Burgum
Secretary
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

The Honorable Howard Lutnick
Secretary
U.S. Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

Dear Secretary Burgum and Secretary Lutnick:

We write to express serious concerns regarding the extreme rule being proposed by the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) to delete the definition of “harm” from Endangered Species Act regulations.¹ By amputating this critical part of Endangered Species Act rules that has been on the books for more than 40 years, the administration would permit the widespread degradation and elimination of habitat for species that Congress enacted the Endangered Species Act to protect.

It is widely understood that a species cannot live without a safe place to call home. That is why, for decades, administrations of both parties have continued to interpret the Endangered Species Act as prohibiting actions that “may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.”² Under the administration’s reading of the statute as laid out in the proposed rule, while it would continue to be unlawful to contribute to a protected species extinction by shooting it with a firearm, it would be perfectly lawful to contribute to a protected species extinction by bulldozing the habitat it relies on for survival. This represents an end run around the Endangered Species Act and completely negates Congress’s intent in passing the Act, which was to prevent threatened or endangered species from going extinct.

FWS and NMFS have both repeatedly stated that habitat loss is the primary driver of species extinction. A large body of independent, peer-reviewed scientific evidence supports this conclusion. It is then puzzling why agencies under your leadership would now propose to allow private entities to degrade the habitat of species protected under the Endangered Species Act. Congress made clear its intent in the law to protect the habitat of critical species.

Furthermore, combined with efforts by the administration and DOGE to expel expert personnel from federal agencies like FWS and the National Ocean and Atmospheric Administration – which houses NMFS – and starve these agencies of resources, the proposed rule raises the question of how FWS and NMFS will be able to enforce the Endangered Species Act at all.

¹ <https://www.regulations.gov/document/FWS-HQ-ES-2025-0034-0001>

² 50 CFR 17.3

Congress should be kept fully informed throughout this rulemaking process. Therefore, we request answers to the following questions:

1. What analysis have FWS and NMFS performed to support this proposed rule?
2. Which external stakeholders provided input on this proposed rule?
3. Did any external stakeholders help draft this proposed rule? If so, which?
4. How do FWS and NMFS intend to prevent the reduction of population numbers or the extinction of threatened and endangered species if private entities are allowed to degrade or destroy the habitat of these species?

President Richard Nixon signed the Endangered Species Act in 1973, after the Senate unanimously passed the Act. Protecting wildlife should not be a partisan issue, and wildlife and the habitats they depend on generate innumerable benefits for humanity, including providing stability for our food systems and clean air and water. It is important that the administration not lose sight of Congress's intent when it passed the Act.

Thank you, and we look forward to your response.

Sincerely,



Adam B. Schiff
United States Senator
Ranking Member
Subcommittee on Fisheries,
Water, and Wildlife



Sheldon Whitehouse
United States Senator
Ranking Member
Committee on Environment
and Public Works



Cory A. Booker
United States Senator