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Endangered Species Act: U.S. Fish and Wildlife Service/National Marine Fisheries Service Issue Four Proposed Rules

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The United States Fish and Wildlife Service (“Service”) and National Marine Fisheries Service (“NMFS”) issued on November 19th four proposed Endangered Species Act (“ESA”) rules.

To a great extent, the four proposed rules would reinstate regulations promulgated during the first Trump Administration and revise regulations promulgated during the Biden Administration.

The ESA was enacted in 1973 with the objective of protecting and recovering imperiled species and the ecosystems on which they depend. The Service has primary responsibility for terrestrial and freshwater organisms, while the NMFS has primary responsibility for marine wildlife.

The ESA provides opportunities for species to be listed as either endangered or threatened. “Endangered” means that the species is in danger of extinction throughout all or a significant portion of its range. See § 16 U.S.C. 1532(6). “Threatened” means a species is likely to become endangered within the foreseeable future. See § 16 U.S.C. 1532(20).

Pursuant to § 16 U.S.C. 1531 et seq, the two federal agencies maintain lists of endangered and threatened wildlife and plants. They are required to review each listed species’ status at least once every five years.

The federal agencies in consultation with the Service or NMFS are required to ensure that action they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat of such species. Further, the ESA also prohibits any action that causes a “taking” of any listed species of endangered fish or wildlife. Likewise, import, export, interstate, and foreign commerce of listed species are all generally prohibited.

The ESA can be enforced through civil and criminal penalty provisions along with citizen suits.

The four rules proposed are stated by the Trump Administration to “strengthen American energy independence, improve regulatory predictability, and ensure federal actions align with the best reading of the law.”

The four proposed rules include:

- Listing and critical habitat (50 CFR part 424)
- Described as a two-step process for designating unoccupied habitat, restoring clarity to the definition of “foreseeable future” and reinstates flexibility to determine when designating critical habitat is not prudent.

- Interagency cooperation (50 CFR part 402)
- Described as reinstating definitions of “effects of the action” and “environmental baseline,” removing the 2024 “offset” provisions and restoring section 7 procedures consistent with the statutory text.
- Threatened species protections (50 CFR part 17; section 4(d))
- Described as eliminating the “blanket rule” option and require species-specific 4(d) rules tailored to each threatened species.
- Critical habitat exclusions (50 CFR part 17; section 4(b)(2))
- Described as reinstating the 2020 rule clarifying how economic, national security and other relevant impacts are weighed when determining whether to exclude areas from critical habitat.

A link to the four proposed rules can be found below:

- <https://www.govinfo.gov/content/pkg/FR-2025-11-21/pdf/2025-20552.pdf>
- <https://www.govinfo.gov/content/pkg/FR-2025-11-21/pdf/2025-20550.pdf>
- <https://www.govinfo.gov/content/pkg/FR-2025-11-21/pdf/2025-20551.pdf>