



May 19, 2025

Submitted via www.regulations.gov

Paul Souza, Acting Director
Public Comments Processing, Attn: FWS-HQ-ES-2025-0034,
U.S. Fish and Wildlife Service, MS: PRB/3W,
5275 Leesburg Pike, Falls Church,
VA 22041-3803

**Re: “Rescinding the Definition of “Harm” Under the Endangered Species Act.”,
(FWS-HQ-ES-2025-0034)**

Dear Director Souza and Assistant Administrator Soler:

Thank you for this opportunity to comment on the United States Fish and Wildlife Service (FWS) and the National Marine Fisheries Service’s (NMFS) (collectively referred to as the Services) proposed “Rescinding the Definition of “Harm” Under the Endangered Species Act.” (FWS-HQ-ES-2025-0034).

On behalf of our individual members and supporters, St. Johns RIVERKEEPER writes to affirm the importance of preserving the current language and interpretation of the word “harm” and to oppose the proposed rescinding of the definition of “harm” under the Endangered Species Act, as it would undermine protections for endangered species and violate legal precedent set by the U.S. Supreme Court.

St. Johns RIVERKEEPER is a privately-funded, independent and trusted voice for the St. Johns River and the public to whom it belongs. We are a 501(c)(3) organization.

We urge the Services to maintain the current regulatory definition of “harm” under the ESA. This definition is legally sound, scientifically justified, and critical for the effective protection of endangered and threatened species, as well as the preservation of clean water and healthy ecosystems.

The following serves to prove how detrimental the proposed change would be to not only the St. Johns River Watershed, but to the entirety of the State of Florida and, in the broadest sense, our nation.

Rescinding the More Protective Definition of “Harm” Undermines Supreme Court Precedent and Congressional Intent.

The Services’ interpretation and definition of the word “harm” was upheld by the Supreme Court in *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687 (1995), wherein the Court recognized that habitat destruction leading to injury or death of protected species falls within the scope of prohibited actions under the ESA. *Sweet Home* utilized the *Chevron* deference rule and acknowledged that agencies’ scientific expertise should be given some weight when rulings of the Court are made. The Services are now attempting to use *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 400 (2024) to argue that the existing definition of “harm” under their regulations does not match the single, best meaning of the statute contested in *Sweet Home*. However, the Supreme Court’s holding in *Loper Bright* specifically states that *Loper Bright* does not overrule past decisions that relied on the *Chevron* deference rule. This holding protects and upholds the ruling made in *Sweet Home*. Therefore, the Services’ use of *Loper Bright* as a foundational basis for changing the current, and previously-upheld, definition of “harm” is unfounded. *Sweet Home* also attested to the importance of the statute’s legislative history; in his delivery of the Supreme Court’s opinion, Justice Stevens wrote “[t]he Committee Reports accompanying the bills that became the ESA...make clear that Congress intended ‘take’ to apply broadly to cover indirect as well as purposeful actions.” If your organizations truly wish to adhere to the “single, best meaning of the ESA,” you will consider Congress’ intent at the outset of the ESA’s creation.

The Services’ proposed rescission relies on Justice Scalia’s dissent in *Sweet Home*, to justify eliminating this definition. However, Justice Scalia’s decision failed to sway the majority of the Court for the same reason it should not be applied here. Justice Scalia (and the proposed rescission) erroneously invoke the legal canon *noscitur a sociis*—a principle of statutory interpretation which holds that the meaning of an ambiguous term may be clarified by the context of surrounding words. However, harm is not an ambiguous word in the statute, and its dictionary definition of “damage, injure, or hurt” is sufficient for interpretation. The creators of the ESA included both the words “harm” and “wound” as two of the defining characteristics of “take.” It is clear in the language that “harm” and “wound” are not intended to be interchangeable, but rather to complement each other. While “wound” can be considered a form of “harm,” “harm” has a much broader connotation that inherently includes indirect action. The regulations previously promulgated by the Services correctly support this, and should remain intact.

Rescinding the more protective definition of “harm” blatantly ignores the intent of the ESA, as well as decades of research proving that habitat is imperative to species’ survival.

For decades, science has proven that habitat is imperative to species’ survival (Wilcove, et al., 1998). There simply cannot be one without the other. Groombridge 1992 attests that destruction and fragmentation of natural habitats are the two most important factors in the current species extinction event. Additionally, habitats of imperiled species and habitats of other species are not mutually exclusive; threatening protective critical habitats of imperiled species will inherently place other important recreational and commercial species at risk (Bonefish & Tarpon Trust, 2025; Rybicki & Hanski, 2013; Brooks, et al., 2002; Fahrig, 1997).

There are 45 major terrestrial, freshwater, and marine habitats in the state of Florida. Threats to these habitats include degradation from surrounding development, eutrophication (excess nutrients) from various sources, namely stormwater runoff, agricultural drainage, & septic systems, invasion by exotic plants, light pollution, coastal construction, fragmentation, surface and groundwater withdrawals, upstream dams, channel modification / dredging, and pollutant spills (FWC, 2025a). The ESA’s protective definition of “harm” has allowed for imperiled species’ protection from these threats, whether the threats were intentional or not. If there is zero recourse against parties who threaten protective habitat (intentionally or not), our state and nation will undoubtedly see record losses in species that are essential to the health and productivity of surrounding ecosystems, and to the economic prosperity of the states who benefit from them.

Rescinding the more protective definition of “harm” would open the door for a myriad of new threats, including, but not limited to:

- 1) Increased development of previously protected habitat
- 2) Allowance of herbicide or pesticide spraying on previously protected areas
- 3) Mining or extraction activities in areas that were previously protected
- 4) Dredging activities in areas that were previously protected

Rescinding the more protective definition of “harm” would place the following Floridian Habitats at risk:

- 1) Wetlands
- 2) Saltmarsh
- 3) Submerged Aquatic Vegetation (SAV)
- 4) Nursery grounds & migratory pathways of important recreational & commercial species
- 5) Estuaries
- 6) Mangroves

Rescinding the more protective definition of “harm” would threaten the following Ecosystem Services currently provided by the above habitats:

- 1) Flood protection
- 2) Pollutant filtration
- 3) Pollination
- 4) Groundwater recharge
- 5) Carbon sequestration
- 6) Storm surge protection
- 7) Erosion control
- 8) Invasive species protection
- 9) Recreational opportunities
- 10) Economic opportunities

Economic significance of preserving the St. Johns River Watershed

The St. Johns River is designated an American Heritage River in recognition of its ecological, historic, economic, and cultural significance (Golder Associates, Inc., 2009). The river supports significant commercial and recreational activities in the region and has been called “the trade engine that drives Jacksonville,” (Leavy, 2006) which is not only the 10th largest city in the United States, but the 4th largest-gaining city in population. A study conducted in 2015 placed the economic value provided by the Lower St. Johns River to Northeast Florida at over \$4.5 billion annually (\$3.5 billion from wetlands; \$944 million from increased riverfront property values; and \$90-109 million for recreation) (Hackney, 2015). The river supports a major sports fishery industry and is the region's most significant source of shrimp, blue crab, and catfish (Leavy, 2006; UNF River Report, 2018, pp. 98-100).

The current protective definition has not served to substantially damage economics or industrial advancement.

In 1982, the ESA was amended to allow for the Habitat Conservation Plan (see Section 10 of the ESA). This planning document accommodates “economic development to the extent possible by authorizing the limited and unintentional take of listed species when it occurs incidental to otherwise lawful activities” (FWS, 2025). Secondly, an area may be excluded from critical habitat designation based on economic impact, the impact on national security, or any other relevant impact, if it is determined that the benefits of excluding it outweigh the benefits of including it (FWS, 2017). Once an area is designated as critical habitat, it does not prevent all development; only activities that are likely to adversely modify critical habitat are affected.

In Florida, Land Use and Land Cover has changed significantly. Florida has seen a 25% increase in urban land development between 1970 and 2000 (Nedd & Anandhi, 2022). Additionally, according to Milesi (2003), “growth in population size and land occupation has been higher than the national average in the southeastern United States where strong economic forces are reshaping the landscape through urbanization.” The ESA was created in 1973; clearly, the present definition of the word “harm” has not even remotely hindered growth, advancement, or economic opportunity in this state. It is imperative that Floridians and the agencies which represent us consider the ramifications of this proposed change to the ESA, as our region will likely feel the effects more drastically.

Species at risk in Florida: According to the Florida Fish & Wildlife Commission (FWC) (2022), there are 89 species that are either Federally Endangered or Federally Threatened (50 Federally Endangered, 39 Federally Threatened). For a complete list, see Appendix A attached hereto and incorporated by reference.

Rescinding the more protective definition of “harm” will have broad implications and far-reaching impacts.

According to FWC (2025b), if Florida’s population doubles by 2060, as the *Florida 2060: A Population Distribution Scenario for the State of Florida* predicts, “about 7 million additional acres of land - equivalent to the state of Vermont - could be converted from rural and natural to urban uses” (see Image 1). More than 2 million of these 7 million projected acres lie within a single mile of existing public conservation lands - this means that, although those lands are protected, they will become increasingly fragmented. According to this same study, nearly 2.7 million acres of native habitat will be converted to more industrial uses (FWC, 2008). The habitat pyramid in Image 2 showcases how the loss of even 25,000 acres (equivalent to the loss of one black bear’s home range) can have far-reaching consequences for a great number of species. When these lost acres extend into the millions, the results are far more disastrous.

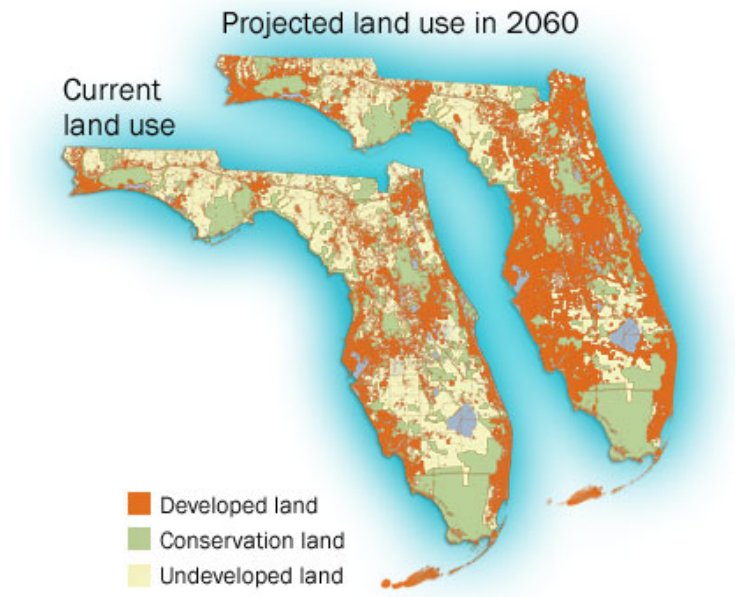


Image 1: Projected FL Land Use Changes, 2060 (FWC, 2025)

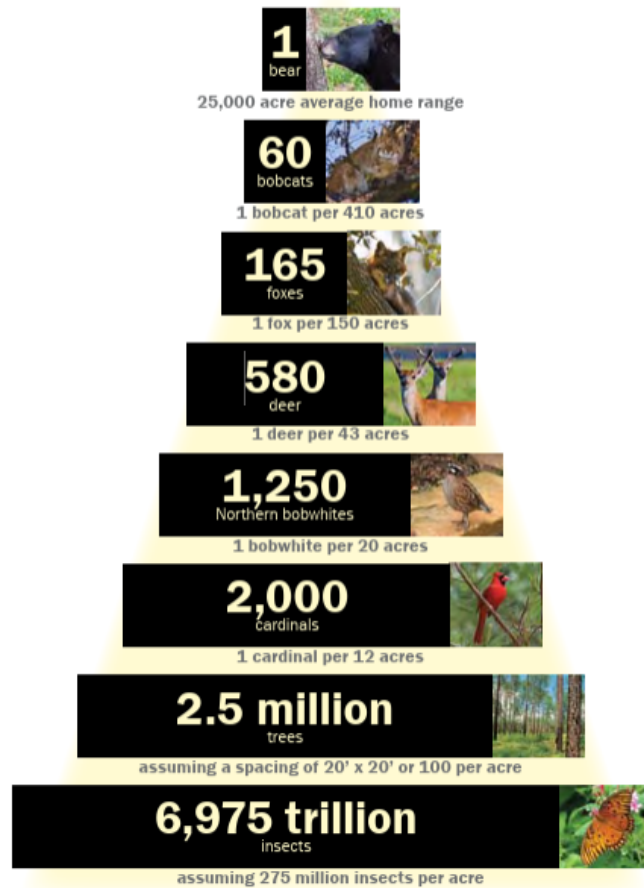


Image 2: Habitat Pyramid - Species Impacts at 25,000 Acre Habitat Loss

Currently, the ESA grants the FWS and NMFS the authority to the federal authority to govern and permit industrial activity; this has previously included activities that may modify habitat of imperiled species. If the definition of “harm” is rescinded to only include direct action against imperiled species, Section 10 of the ESA loses much of its relevance and Section 7 consultations for habitat modification will presumably no longer be required. On average, the FWS completes about 1,002 formal Section 7 consultations each year and 11,123 informal Section 7 consultations each year (FWS, 2023); the effectual negation of Sections 10 and 7 will significantly increase both industries’ and individuals’ ability to degrade habitat without mitigation or other recourse. Coupled with the staggering predictions for population growth and habitat loss, this paints a terrifying picture for the survival of imperiled species, in addition to other recreationally- and commercially-important species.

Rescinding the more protective definition of “harm” is directly contrarian to the foundational ideas of the FWS and NMFS.

Martha Williams, Director of the U.S. Fish and Wildlife Service, confirmed the importance of conserving critical habitat in her 2023 testimony to the Subcommittee on Water, Wildlife, and Fisheries: “[t]he Service’s mission is working with others to conserve, protect, and enhance fish, wildlife, plants, *and their habitats* for the continuing benefit of the American people...” (emphasis added). Ms. Williams went on to state that the catalyst for the creation of the ESA was the “steady and precipitous decline of wildlife and habitat from overharvest and habitat loss and degradation...” (FWS, 2023). Your agencies’ proposed change to the definition of “harm” exceedingly limits the scope and protection for species and goes against the catalyst for the creation of the ESA.

St. Johns RIVERKEEPER strongly opposes the proposed revision to the definition of “harm” under the Endangered Species Act. This change disregards clear Supreme Court precedent, undermines the intent of Congress, and would severely weaken protections for vital habitats—putting endangered species and the ecosystems they depend on at even greater risk.

Respectfully,

A handwritten signature in cursive script that reads "Lisa Rinaman". The ink is dark and the signature is fluid, with a large initial 'L' and 'R'.

Lisa Rinaman
St. Johns Riverkeeper
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APPENDIX A

FEDERALLY ENDANGERED (FE) AND THREATENED (FT) FLORIDA SPECIES: TOTAL = 89

FISH: 7 SPECIES

Common Name	Scientific Name	Status
Atlantic sturgeon	<i>Acipenser oxyrinchus oxyrinchus</i>	FE
Shortnose sturgeon	<i>Acipenser brevirostrum</i>	FE
Smalltooth sawfish	<i>Pristis pectinate</i>	FE
Giant manta ray	<i>Manta birostris</i>	FT
Gulf sturgeon	<i>Acipenser oxyrinchus desotoi</i>	FT
Nassau grouper	<i>Epinephelus striatus</i>	FT
Okaloosa darter	<i>Etheostoma okaloosae</i>	FT

AMPHIBIANS: 2 SPECIES

Common Name	Scientific Name	Status
Reticulated flatwoods salamander	<i>Ambystoma bishopi</i>	FE
Frosted flatwoods salamander	<i>Ambystoma cingulatum</i>	FT

REPTILES: 10 SPECIES

Common Name	Scientific Name	Status
Kemp's ridley sea turtle	<i>Lepidochelys kempii</i>	FE
Leatherback sea turtle	<i>Dermochelys coriacea</i>	FE
American alligator	<i>Alligator mississippiensis</i>	FT
American crocodile	<i>Crocodylus acutus</i>	FT
Atlantic salt marsh snake	<i>Nerodia clarkii taeniata</i>	FT
Bluetail mole skink	<i>Plestiodon egregius lividus</i>	FT
Eastern indigo snake	<i>Drymarchon couperi</i>	FT
Green sea turtle	<i>Chelonia mydas</i>	FT
Loggerhead sea turtle	<i>Caretta caretta</i>	FT
Sand skink	<i>Plestiodon reynoldsi</i>	FT

BIRDS: 15 SPECIES

Common Name	Scientific Name	Status
Bachman's wood warbler	<i>Vermivora bachmanii</i>	FE
Cape Sable seaside sparrow	<i>Ammodramus maritimus mirabilis</i>	FE
Eskimo curlew	<i>Numenius borealis</i>	FE
Everglade snail kite	<i>Rostrhamus sociabilis plumbeus</i>	FE
Florida grasshopper sparrow	<i>Ammodramus savannarum floridanus</i>	FE
Ivory-billed woodpecker	<i>Campephilus principalis</i>	FE

Kirtland's warbler	<i>Setophaga kirtlandii</i>	FE
Red-cockaded woodpecker	<i>Picoides borealis</i>	FE
Audubon's crested caracara	<i>Polyborus plancus audubonii</i>	FT
Eastern black rail	<i>Laterallus jamaicensis jamaicensis</i>	FT
Florida scrub-jay	<i>Aphelocoma coerulescens</i>	FT
Piping plover	<i>Charadrius melodus</i>	FT
Roseate tern	<i>Sterna dougallii dougallii</i>	FT
Rufa red knot	<i>Calidris canutus rufa</i>	FT
Wood stork	<i>Mycteria americana</i>	FT

MAMMALS: 24 SPECIES

Common Name	Scientific Name	Status
Anastasia Island beach mouse	<i>Peromyscus polionotus phasma</i>	FE
Choctawhatchee beach mouse	<i>Peromyscus polionotus allophrys</i>	FE
Finback whale	<i>Balaenoptera physalus</i>	FE
Florida bonneted bat	<i>Eumops floridanus</i>	FE
Florida panther	<i>Puma [=Felis] concolor coryi</i>	FE
Florida salt marsh vole	<i>Microtus pennsylvanicus dukecampbelli</i>	FE
Gray bat	<i>Myotis grisescens</i>	FE
Gray wolf	<i>Canis lupus</i>	FE
Bryde's Whale	<i>Balaenoptera edeni</i>	FE
Humpback whale	<i>Megaptera novaeangliae</i>	FE
Indiana bat	<i>Myotis sodalis</i>	FE
Key deer	<i>Odocoileus virginianus clavium</i>	FE
Key Largo cotton mouse	<i>Peromyscus gossypinus allapaticola</i>	FE
Key Largo woodrat	<i>Neotoma floridana smalli</i>	FE
Lower Keys rabbit	<i>Sylvilagus palustris hefneri</i>	FE
North Atlantic right whale	<i>Eubalaena glacialis</i>	FE
Perdido Key beach mouse	<i>Peromyscus polionotus trissyllepsis</i>	FE
Red wolf	<i>Canis rufus</i>	FE
Rice rat	<i>Oryzomys palustris natator</i>	FE
Sei whale	<i>Balaenoptera borealis</i>	FE
Sperm whale	<i>Physeter macrocephalus</i>	FE
St. Andrew beach mouse	<i>Peromyscus polionotus peninsularis</i>	FE
Southeastern beach mouse	<i>Peromyscus polionotus niveiventris</i>	FT
West Indian manatee (Florida manatee)	<i>Trichechus manatus</i>	FT

INVERTEBRATES (CORALS): 7 SPECIES

Common Name	Scientific Name	Status
Boulder star coral	<i>Orbicella franksi</i>	FT
Elkhorn coral	<i>Acropora palmata</i>	FT
Lobed star coral	<i>Orbicella annularis</i>	FT

Mountainous star coral	<i>Orbicella faveolata</i>	FT
Pillar coral	<i>Dendrogyra cylindricus</i>	FT
Rough cactus coral	<i>Mycetophyllia ferox</i>	FT
Staghorn coral	<i>Acropora cervicornis</i>	FT

INVERTEBRATES (CRUSTACEANS): 2 SPECIES

Common Name	Scientific Name	Status
Panama City crayfish	<i>Procambarus econfinae</i>	FT
Squirrel Chimney Cave shrimp	<i>Palaemonetes cummingi</i>	FT

INSECTS: 6 SPECIES

Common Name	Scientific Name	Status
Bartram's scrub-hairstreak	<i>Strymon acis bartrami</i>	FE
Florida leafwing	<i>Anaea troglodyta floridalis</i>	FE
Miami blue butterfly	<i>Cyclargus thomasi bethunebakeri</i>	FE
Miami tiger beetle	<i>Cicindelidia floridana</i>	FE
Schaus swallowtail butterfly	<i>Schaus swallowtail butterfly</i>	FE
American burying beetle	<i>American burying beetle</i>	FT

MOLLUSKS: 16 SPECIES

Common Name	Scientific Name	Status
Choctaw bean	<i>Choctaw bean</i>	FE
Fat threeridge (mussel)	<i>Fat threeridge (mussel)</i>	FE
Gulf moccasinshell (mussel)	<i>Medionidus penicillatus</i>	FE
Ochlockonee moccasinshell (mussel)	<i>Medionidus simpsonianus</i>	FE
Oval pigtoe (mussel)	<i>Pleurobema pyriforme</i>	FE
Round ebonyshell	<i>Reginaia rotulata</i>	FE
Shinyrayed pocketbook (mussel)	<i>Hamiota subangulata</i>	FE
Southern kidneyshell	<i>Ptychobranchus jonesi</i>	FE
Chipola slabshell (mussel)	<i>Elliptio chipolaensis</i>	FT
Fuzzy pigtoe	<i>Pleurobema strodeanum</i>	FT
Narrow pigtoe	<i>Fusconaia escambia</i>	FT
Purple bankclimber (mussel)	<i>Elliptioideus sloatianus</i>	FT
Southern sandshell	<i>Hamiota australis</i>	FT
Stock Island tree snail	<i>Orthalicus reses</i>	FT
Suwannee moccasinshell	<i>Medionidus walkeri</i>	FT
Tapered pigtoe	<i>Tapered pigtoe</i>	FT

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