



Attacks on the Endangered Species Act Regulations



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A Powerful Tool to Protect Animals

The ESA is “the most comprehensive legislation for the preservation of endangered species ever enacted by any nation,” and embodies Congress’s “commitment to halt and reverse the trend toward species extinction, whatever the cost.” *Ctr. for Biological Diversity v. Zinke*, 900 F.3d 1053, 1059 (9th Cir. 2018) (quoting *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180, 184 (1978)) (cleaned up).

93% of listed species have increased or stabilized after listing

More than 100 species of plants and animals have been delisted based on recovery or reclassified from endangered to threatened based on improved conservation status

Legal Win Protects Minnesota's Rare Lynx From Cruel, Indiscriminate Trapping

Strangulation Snares Banned in Northeastern Minnesota to Curb Illegal Captures, Killings of Wild Cat

MINNEAPOLIS— A federal judge today [ordered](#) the Minnesota Department of Natural Resources to ban most uses of strangulation snares in northeastern Minnesota.



Oklahoma City – Today, the U.S. District Court for the Western District of Oklahoma granted PETA a [victory](#) in its Endangered Species Act (ESA) lawsuit against notorious animal exhibitor and *Tiger King* villain Jeff Lowe, finding that Lowe “treated the four lions directly involved in this case ... with appalling cruelty.” **This is the first court decision establishing that Lowe’s treatment of animals is so deficient it violates the ESA.**



Legal Action Prompts Feds to Stop Killing Oregon Beavers

Wildlife Services' Commitment Helps Protect Endangered Salmon, Steelhead

PORTLAND, Ore.— In response to the threat of litigation by two environmental groups, a federal wildlife-killing program has [agreed](#) to stop killing beavers, river otter, muskrat and mink in Oregon.

Wildlife Services, part of the U.S. Department of Agriculture, also agreed to work with a federal agency charged with protecting imperiled animals to analyze the program’s impacts on threatened and endangered fish like salmon and steelhead.



Brief Overview of Recent Developments



- 2019: regulatory revisions during the first Trump administration.
 - Litigation challenging these regulations: *Ctr. for Biological Diversity v. Bernhardt*, 3:19-cv-05206 (N.D. Cal. Aug. 21, 2019).
- Following the change in administrations, the Biden administration ordered the review of the 2019 revisions. Case was remanded, leaving the 2019 regulations in force until they were later revised by the Biden administration.
- New Biden regulations were finalized in April in of 2024: removed some of the bad changes from the 2019 regulatory revisions, kept others, and added a few changes.
 - Legal challenge to 2024 revisions (as well as the remaining parts of the 2019 revisions): *Center for Biological Diversity v. U.S. Dep't of the Interior*, 4:24-cv-4651-JST (N.D. Cal.).
- While that case was pending, new proposed regulatory changes were issued. These changes largely revert to 2019 regulatory changes, with some modifications.
- On March 30, 2026, Judge Tigar (N.D. Cal.) overturned challenged regulatory changes to ESA Section 7 (dealing with interagency consultation), but upheld certain challenged regulatory changes concerning ESA Section 4.

Sec. 3: Definitions

16 U.S.C. § 1532



The term “endangered species” means any species which is in danger of extinction throughout all or a significant portion of its range

The term “threatened species” means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range





Prohibition on “take” of endangered species. 16 U.S.C. § 1538.

Take is broadly defined: “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” 16 U.S.C. § 1532(19).

Even incidental/unintentional take is prohibited, unless authorized by permit.

Also prohibits the violation of “any regulation pertaining to [endangered or] threatened species of fish or wildlife... promulgated by the Secretary pursuant to authority provided by this Act.”

16 U.S.C. § 1538(a)(1)(G).

Section 9

Section 4(d)

- “Whenever any species is listed as a threatened species... the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section [9] of this title...with respect to endangered species[.]” 16 U.S.C. § 1533(d).
 - Blanket 4(d) Rule: Two years after the ESA was enacted, FWS exercised its authority under Section 4(d) to extend automatic protections from “take” to all threatened species, unless FWS promulgates a species-specific rule. 50 C.F.R. § 17.31(a). *NMFS has no analogous rule.



Lethal Loopholes



- **Protecting the Livestock Industry:** grizzly bear 4(d) Rule allows the take of “nuisance bears,” including those that “commit[] significant depredations to lawfully present livestock” under certain conditions. 50 C.F.R. § 17.40(b)(C).
- **Animals in Captivity:** take prohibition does not apply to certain primates held in captivity and their offspring (e.g., Lesser slow loris, Japanese macaque). 50 C.F.R. § 17.40(c).
- **Incidental Trapping:** allows take of wolverines incidental to lawful trapping of other species, if the trapping is “conducted in a manner that uses best practices to minimize the potential for capture and mortality of wolverines.” 50 C.F.R. § 17.40(u)(2)(vi).
- **Importing Trophies:** no Threatened Species permit required for importation of sport-hunted leopard trophies legally taken from certain areas, provided certain conditions have been met. 50 C.F.R. § 17.40(f).

Blanket 4(d) Rule Removal



- Removed under the Trump I in 2019. 84 Fed. Reg. 44753 (Aug. 27, 2019).
- Reinstated under Biden in 2024. 89 Fed. Reg. 23919 (Apr. 5, 2024).
- Proposed for removal (again) under Trump II in 2025. 90 Fed. Reg. 52587 (Nov. 21, 2025).
 - Proposed rule includes new requirement that each 4(d) rule to include a “necessary and advisable determination” that would include consideration of conservation and economic impacts and seek public comment on those determinations.
 - FWS stated intent to create species-specific rules for species currently protected under the blanket 4(d) rule.
 - Stated intent to finalize species-specific rules concurrently with final listing or reclassification determinations, but noted discretion to revise or promulgate species-specific rules at any time after the final listing or reclassification determination.

“Harm” Rescission



By regulation, “harm” is defined to include: “significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns,” including breeding, feeding, and sheltering.

Proposed Rule: 90 Fed. Reg. 16102 (Apr. 17, 2025)

- 1) Rescinds the regulatory definition of harm;
- 2) Does not propose a new regulatory definition of harm;
- 3) Expresses intent to limit “harm” to only encompasses direct and intentional injury and killing (excludes habitat degradation).