COMMENT LETTER:

On behalf of the Society for Conservation Biology North America (SCBNA) - part of the global Society for Conservation Biology representing **nearly 3000** members from six global regions - we write in strong opposition to the proposed rule to rescind the regulatory definition of "harm" under the Endangered Species Act (ESA). The proposed action would significantly weaken one of our nation's most effective conservation laws and jeopardize the survival of imperiled species by stripping away a critical mechanism for addressing habitat-based threats. It is necessary to continue to protect the habitat of threatened species to preserve the unique natural heritage that is the pride of our Nation.

We emphasize here five items of particular concern:

1. Habitat Loss Is a Primary Driver of Extinction

The scientific consensus is clear: habitat destruction is the leading cause of species endangerment and extinction worldwide. The longstanding regulatory definition of "harm"—which includes significant habitat modification that results in actual injury or death of wildlife—is not only reasonable, it is essential. Rescinding it would leave federal agencies unable to effectively address the most pervasive threats to biodiversity.

2. The Definition of "Harm" Has a Proven Legal Foundation

The current definition of "harm" was upheld by the Supreme Court in Babbitt v. Sweet Home Chapter of Communities for a Great Oregon (1995), which affirmed that habitat destruction leading to the death or injury of protected species is a legitimate interpretation of the ESA's prohibition against "take." While the 2024 Loper Bright decision altered the standard of judicial review, it did not invalidate Sweet Home's reasoning or its conclusion. The proposed rescission misinterprets the Court's intent and unnecessarily undermines well-established precedent.

3. This Change Will Severely Undermine ESA Enforcement

Removing the regulatory definition of "harm" will:

- Create legal ambiguity around habitat-based actions that indirectly harm species
- Make it harder for federal agencies to enforce ESA protections proactively
- Delay conservation interventions until after direct injury or death occurs—often when it is too late
- Directly conflict with the ESA's preventative, science-based framework.

4. Rescinding the Definition is Scientifically and Ecologically Unsound

From an ecological standpoint, species are inextricably linked to their habitats. Breeding, feeding, sheltering, and migration are all behaviorally mediated and habitat-dependent. Allowing

destruction of habitat with no regulatory recourse—simply because the "take" is not immediate—represents a fundamental misunderstanding of the basic tenets of wildlife biology and ecosystem dynamics.

5. The Rule Ignores Best Available Science and the Precautionary Principle
The ESA requires that decisions be made using the best available scientific data **as stated in sections 4(b)(1)(A) & 4(b)(2)**. This proposal dismisses decades of biological evidence and legal practice that demonstrate the vital importance of habitat protections [1, 2, 3]. By adopting a narrow, legalistic reinterpretation of "take," the proposed rule fails to meet the ESA's scientific mandate or its moral responsibility to prevent extinction.

In conclusion, SCBNA strongly urges the **Fish and Wildlife Service and the National Marine Fisheries Service** to retain the current definition of "harm" within the regulatory definition of "take." Doing so is both legally justified and essential to fulfilling the ESA's purpose of conserving endangered and threatened species and the ecosystems upon which they depend.

Sincerely,

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[1] IPBES (2019): Summary for policymakers of the global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. S. Díaz, J. Settele, E. S. Brondízio, H. T. Ngo, M. Guèze, J. Agard, A. Arneth, P. Balvanera, K. A. Brauman, S. H. M. Butchart, K. M. A. Chan, L. A. Garibaldi, K. Ichii, J. Liu, S. M. Subramanian, G. F. Midgley, P. Miloslavich, Z. Molnár, D. Obura, A. Pfaff, S. Polasky, A. Purvis, J. Razzaque, B. Reyers, R. Roy Chowdhury, Y. J. Shin, I. J. Visseren-Hamakers, K. J. Willis, and C. N. Zayas (eds.). IPBES secretariat, Bonn, Germany. 56 pages. https://doi.org/10.5281/zenodo.3553579

[2] Newbold, T., Hudson, L., Hill, S. et al. Global effects of land use on local terrestrial biodiversity. Nature 520, 45–50 (2015). https://doi.org/10.1038/nature14324

[3] Powers, R.P., Jetz, W. Global habitat loss and extinction risk of terrestrial vertebrates under future land-use-change scenarios. Nat. Clim. Chang. 9, 323–329 (2019). https://doi.org/10.1038/s41558-019-0406-z