



U.S. Fish and Wildlife Service

USFWS & NOAA ENDANGERED SPECIES ACT PROPOSED REGULATION REVISIONS – SECTIONS 4 & 7

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U.S. Fish and Wildlife Service

- Proposed changes to Endangered Species Act *regulations*
- Section 4 - Listing, Critical Habitat, and Recovery, and Section 7 – Interagency Consultation
- June 22, 2023 three proposed rules published in Federal Register
- Comments due 08/21/2023



Reasons for proposed rules

- Executive Order 13990 (Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis)
- Review rules to ensure ESA effectively addresses 21st century conservation challenges, such as climate change .
- Revisions to 2019 final rules



Three proposed rules

1. Clarifications on listing, delisting, and reclassification decisions, and revisions how the Services designate critical habitat, under section 4 of the ESA.
2. Reinstating certain regulatory options for protecting threatened species, referred to as “blanket 4(d) rules”, under section 4 of the ESA.
3. Clarification to interagency cooperation (consultation) under section 7 of the ESA.



1. Listing, delisting, and reclassification decisions, and critical habitat designation

- Restore the phrase “without reference to possible economic or other impacts of such determination” to 50 CFR 424.11(b) to make clear that any economic impacts (costs or benefits) stemming from the listing, reclassifying, or delisting of a species cannot be considered when making classification decisions.
- Revise portions of the foreseeable future framework to align the regulation more closely with a 2009 Department of Interior Solicitor’s opinion on the meaning of the term “foreseeable future.”
- Reinsert the concept of “recovery” to the list of circumstances for delisting a species to explicitly acknowledge this fundamental goal of the ESA and recognize it as a reason for delisting species.

1. Listing, delisting, and reclassification decisions, and critical habitat designation

- Revise the requirements for designating unoccupied critical habitat to remove criteria that were newly added in 2019 and which could conflict with the standards for designating critical habitat outlined in the Act.



2. “Blanket 4(d) rules”

- Reinststate the 4(d) “blanket rule” option that was in place before 2019 for protecting threatened species.
- Extend to federally recognized Tribes the exceptions to prohibitions that the regulations currently provide to the employees or agents of the Service and other Federal and State agencies to aid, salvage, or dispose of threatened species.



3. Interagency cooperation

- Revisions to the definitions of “environmental baseline” and “effects of the action,” eliminating the section titled “Other Provisions”, clarifying responsibilities regarding reinitiating consultation, and revising the scope of reasonable and prudent measures in an incidental take statement.
- Clarification that, after considering measures that avoid or reduce incidental take within the action area, the Services may consider for inclusion as reasonable and prudent measures that offset any remaining impacts of incidental take that cannot be avoided.

Website for more information and links to proposed rules

- <https://www.fws.gov/project/endangered-species-act-regulation-revisions>
- Click on links to proposed rules to get information how to submit comments
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