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19 May 2025

Gina Shultz, Acting Assistant Director
Ecological Services
U.S. Fish and Wildlife Service
5275 Leesburg Pike
Falls Church, VA 22041-3803
ADEcologicalServices@fws.gov

Re: Docket No. FWS-HQ-ES-2025-0034

Dear Ms. Shultz,

I am writing on behalf of Turtle Survival Alliance to express our vehement opposition to the proposed rescission of the regulatory definition of "harm" under the Endangered Species Act (ESA), as outlined in the Notice of Proposed Rulemaking published by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

Turtle Survival Alliance is a globally-recognized 501(c)(3) nonprofit organization headquartered in the United States. We currently work with 116 species and subspecies of turtles and tortoises, many of which are protected under the ESA. Through science-based conservation, field research, habitat restoration, assurance colonies, and collaborative partnerships—including with state and federal agencies—we work to prevent extinction and secure a future for the world's most endangered chelonians.

We are deeply concerned by the U.S. Fish and Wildlife Service's proposal to rescind the definition of "harm" under Section 9 of the ESA. This change would eliminate the consideration of habitat destruction and degradation as forms of "incidental take," effectively stripping protection from the species that need it most. Turtles and tortoises—like many other small, slow-moving animals—are largely unable to actively retreat from acute and insidious habitat destruction. During activities such as land clearing or waterway modification, these animals are often crushed, buried, or otherwise killed in place, while native vegetation is destroyed. These are all instances of "take." Without the legal safeguard against habitat-based harm, they face an even greater risk of death, injury, or displacement.

The ESA's definition of "take," which includes "harm," plays a critical role in protecting endangered species from a wide range of activities that could lead to their decline or extinction. Habitat modification, recognized as a form of harm, directly impacts wildlife populations by

significantly impairing essential behaviors such as breeding, feeding, and sheltering. This broad interpretation reflects the intent of Congress to safeguard species and their habitats against detrimental human activities.

Rescinding the term "harm" from the ESA regulations would narrow the scope of protections provided under the Act, disregarding the interconnectedness between habitat integrity and species survival. Incidental take of animals and plants resulting from habitat destruction remains a form of take, regardless of intent, and is therefore appropriately classified as harm under the ESA. This rescission would set a dangerous precedent, undermining decades of conservation progress and jeopardizing the future of countless species already facing existential threats.

Moreover, the argument that the current definition of harm contradicts the "best meaning" of the ESA is unsubstantiated. The existing regulatory framework, upheld by legal precedent such as *Babbitt v. Sweet Home Chapter*, aligns with both the letter and spirit of the ESA, ensuring comprehensive protection for endangered wildlife across diverse habitats.

In conclusion, Turtle Survival Alliance urges the Services to maintain the current regulatory definition of harm and uphold their mandate to faithfully execute the ESA. We strongly oppose any actions that weaken protections for endangered species and their habitats.

Thank you for considering our concerns. We look forward to your response and urge the Services to prioritize the conservation of biodiversity in the final rule.

Sincerely,

A handwritten signature in blue ink, appearing to read 'MD', followed by a large, stylized oval flourish.

Marc Dupuis-Desormeaux, Ph.D.
President & CEO
Turtle Survival Alliance