

**Before the
U.S. DEPARTMENT OF INTERIOR, FISH AND WILDLIFE SERVICE
Falls Church, VA 22041**

In the Matter of

Rescinding the Definition of Harm Under the
Endangered Species Act

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Docket No. FWS-HQ-ES-2025-0034-
0001

COMMENTS OF THE WIRELESS INFRASTRUCTURE ASSOCIATION

The Wireless Infrastructure Association (“WIA”)¹ appreciates Fish and Wildlife Service (“FWS”) and National Marine Fisheries Service (“NMFS”) (collectively “Services”) taking this opportunity to streamline its regulations under the Endangered Species Act (“ESA”) by removing unnecessarily expansive qualifiers in its current definition of “harm” that can be considered as part of reviews under this statute (“Proposed Rule”).² WIA’s members are committed to ensuring the responsible deployment of wireless infrastructure that avoids or minimizes potential impact to the surrounding ecosystem. However, as noted in the Proposed Rule, an overly expansive definition of “harm” leads to a host of unrelated effects being brought into the review process. At best, the consideration of these ancillary effects may delay proposed projects; at worst, it can render them economically unfeasible—all without a demonstrable impact on the wildlife populations the ESA is targeted at protecting. Accordingly, WIA supports the Services removing the additional

¹ WIA is the principal organization representing companies that build, design, own, and manage telecommunications facilities throughout the world. Its members include infrastructure providers, telecommunications carriers, and professional services firms.

² *Rescinding the Definition of Harm Under the Endangered Species Act*, Proposed Rule, Docket No. FWS-HQ-ES-2025-0034-0001, 90 Fed. Reg 16102 (Apr. 17, 2025) [“Proposed Rule”].

definitions of “harm” in favor of relying on enforcement against those activities that are consistent with similar interpretations of a “taking” and are appropriately covered by the statute.

As noted in the Proposed Rule, the best and most consistent reading of the activities covered by the ESA should be construed to require an affirmative act directed “immediately and intentionally” at a particular animal.³ This interpretation is well-supported by the other examples included in the definition of “take” within the ESA.⁴ WIA agrees that using a more expansive definition of “harm” to include activities that *may* result in impacts, such as habitat modification—absent further evidence of a directed intent to reduce or harm the ESA-covered population—should not raise to the level of a taking under the ESA.

This proposed change is further supported by recent guidance from the Executive Branch. Specifically, recent guidance included in President Trump’s Executive Orders *Unleashing Prosperity Through Deregulation*⁵ and *Unleashing American Energy*⁶ provides agencies a new impetus to remove and streamline regulations that present barriers to deploying needed infrastructure in many sectors. WIA believes the Proposed Rule will do just that.

WIA appreciates the Administration’s continued efforts to create a predictable, proportionate, and transparent permitting process across the federal government. By removing unnecessary and far-removed impacts from the categories of effects examined during this review, the Services can ensure that infrastructure needed to support key industries, including

³ Proposed Rule at 16103 (quoting *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687 (1995)).

⁴ 16 U.S.C. § 1532(19).

⁵ Exec. Order 14192 (providing that it is the policy of the executive branch to alleviate unnecessary regulatory burdens placed on the American people).

⁶ Exec. Order 14154 (directing the Secretary of Interior, among others, to undertake efforts to eliminate delays within its permitting process and provide greater certainty in the Federal permitting process).

communication networks, will be quickly deployed to the benefit of all Americans. As demonstrated by the Services in the Proposed Rule, this change will make reviews under the ESA more consistent and ensure that limited federal resources can be devoted towards projects that are actually likely to have impacts which the statute is directed to limit; rather than consider vague and unrelated impacts beyond its intended scope.

Respectfully submitted,

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