



Board of County Commissioners

To: Department of the Interior, Fish and Wildlife Service and Department of Commerce, National Oceanic and Atmospheric Administration

Re Docket Number: FWS-HQ-ES-2025-0034

May 16, 2025

Boulder County **strongly opposes** the Administration's proposed change to the regulatory definition of "harm" under the Endangered Species Act's (ESA) list of what constitutes a "take". The definition of a species 'Take' under the ESA, is defined as 'to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct'. Rescinding the definition of harm so that impacts caused by habitat destruction are no longer prohibited under the ESA upends the logical interpretation of what actions will result in a take. The ESA itself cites that the rationale for listing a species as either threatened or endangered includes 'the present or threatened destruction, modification, or curtailment of its habitat or range' (Sec. 4 (A)).

Additionally, changing the interpretation of 'harm' to no longer include habitat impacts runs counter to the fact that after a species is listed under the ESA, critical habitat must then be designated for that species as part of the federal species recovery process. It is a critical, simple, and clear fact that species require habitat to survive. Without habitat protection, species listed under the ESA will move toward extinction – and may well be lost forever.

Further, habitat impacts due to proposed projects are the most common forms of take addressed during the ESA consultation process. Rarely do the impacts of a project require a total stop to a project, as mitigative conservation measures are outlined during the ESA consultation process. The guidance provided for project proponents to implement these mitigative conservation measures to avoid habitat impacts are crucial to ensure survival of listed species. **Without habitat protections being addressed and enforced, the very intention of the ESA is irreparably lost.**

Boulder County's Open Space department is responsible for the management of ~110,000 acres of public lands. These acres were purchased using voter-approved tax funds across several decades. Our public strongly supports land preservation, and the wildlife that depends on it.

Through our Open Space program, Boulder County has conducted many projects to improve and enhance habitat values on Open Space lands, for the benefit of wildlife connectivity and suitability. One example that has specifically benefitted a species listed under the ESA as Threatened, is the restoration of habitat for the Preble's Meadow Jumping Mouse (*Zapus*

Commissioner Claire Levy • Commissioner Marta Loachamin • Commissioner Ashley Stolzmann

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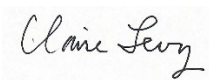
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hudsonius preblei). This very rare species requires intact riparian habitat to find food, breed, disperse, shelter, and hibernate. Therefore, we have undertaken several projects to enhance our riparian areas to support this species. To gauge the success of our efforts, we have conducted before/after studies using mark/recapture techniques that clearly show an expansion of the mouse's local range, due to the improved habitat conditions on which it depends. Prior to these restoration efforts, the mouse was not present, and afterwards, they were. These studies exemplify the vital need for habitat protections to support federally listed species.

The creation of the ESA in 1973 represented a bi-partisan, bedrock commitment to protecting species in this country. It has guided our actions since then. It has consistently and cohesively protected species and the environments on which they depend. **This proposed change would have devastating consequences for our nation's most vulnerable species as well as reversing decades of conservation efforts.**

Through a series of laws created over the last century, including the ESA, the United States Congress, with the overwhelmingly strong support of the public, have declared that we need to collectively protect fish, wildlife, plants, and their habitats. Boulder County strongly urges the Administration not to rescind the definition of harm, and therefore uphold the United States' commitment to saving threatened and endangered species and their habitats.



Commissioner
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