

May 13, 2025

Honorable Doug Burgum
Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Honorable Howard Lutnick
Secretary of Commerce
1401 Constitution Ave NW
Washington, DC 20230

Submitted via: <https://www.regulations.gov/commenton/FWS-HQ-ES-2025-0034-0001>

Re: Opposition to Rescinding the Definition of Harm under the Endangered Species Act, Docket No. FWS-HQ-ES-2025-0034

Dear Secretary Burgum, Secretary Lutnick, U.S. Fish and Wildlife Service, and National Marine Fisheries Service,

Friends of the San Juans is a nonprofit organization established in 1979 and based in Friday Harbor, Washington, with the mission to bring people and nature together to protect the San Juan Islands and the Salish Sea through education, science, policy, and law. Friends of the San Juans was a co-petitioner that led to the federal listing of the Southern Resident killer whales as an endangered species under the Endangered Species Act.¹ The protection and recovery of the Southern Residents continues to be one of our top priorities.

Friends of the San Juans opposes this rulemaking's proposal to rescind the regulatory definition of "harm" under the Endangered Species Act (ESA). This proposal is an attempt to exclude significant habitat modification or degradation that actually kills or injures wildlife from the ESA's prohibition of "take."

According to the U.S. Fish and Wildlife Service:

Loss of habitat is the primary threat to most species listed as endangered or threatened under the Endangered Species Act (ESA).²

¹ National Marine Fisheries Service (NMFS), Listing Endangered and Threatened Species and Designating Critical Habitat: Petition to List Southern Resident Killer Whales, 66 FR 42499 (August 13, 2001). <https://www.federalregister.gov/documents/2001/08/13/01-20282/listing-endangered-and-threatened-species-and-designating-critical-habitat-petition-to-list-southern>.

² U.S. Fish and Wildlife Service. (n.d.). *Endangered species: Overview*. U.S. Department of the Interior. Retrieved May 13, 2025, from <https://www.fws.gov/program/endangered-species/what-we-do>.

In addition to the comments submitted by the Center for Biological Diversity and the Orca Salmon Alliance that Friends of the San Juans is also signing, these comments are submitted to emphasize that protecting habitats for endangered species isn't just about saving wildlife, it's about safeguarding ecosystems that directly benefit humans.

It is important to recognize that the proposed regulation changes that would allow impacts to the habitats of endangered species, through modification or degradation, would also have a significant effect on the human environment and economy.

For example, if the regulatory definition of “harm” is rescinded, and impacts are allowed to the Southern Resident killer whales’ habitat, including the Salish Sea, this would cause a significant effect on the human environment, including economic and cultural impacts, in addition to jeopardizing the protection and recovery of the world-renowned Southern Residents killer whales.

The health of Southern Resident killer whales and their habitat is essential to the health of shoreline communities, including the economic benefits from ecotourism and residents’ quality of life that support local economies.³

Southern Resident killer whales feature prominently in Indigenous Nations’ oral histories, ceremonies, and artwork.⁴ Indigenous Nations identify the cultural significance and the importance of protecting Southern Residents and their habitat.⁵ Significant new investments, policies, and laws have been adopted to protect and recover Southern

³ Employment Security Department, WA State, San Juan County profile: “The islands are spectacularly scenic and a popular destination for tourists and retirees” that “form the base of the San Juan County economy.” <https://esd.wa.gov/jobs-and-training/labor-market-information/reports-and-research/labor-market-county-profiles/san-juan-county-profile>.

⁴ Tulalip News. February 19, 2025. Salish Spirit’s legendary killer whale encounter celebrated on World Whale Day. <https://www.tulalipnews.com/2025/02/19/salish-spirits-legendary-killer-whale-encounter-celebrated-on-world-whale-day/>.

Tulalip News. September 19, 2018. Protecting our Salish Sea, the salmon and the southern resident orcas. <https://www.tulalipnews.com/tag/orcas/>.

The Sacred Lands Conservancy dba Sacred Sea: <https://sacredsea.org/>.

⁵ Chelsea Quaies and Michelle Bender. The Lummi Nation’s Fight for ‘Rights of the Orcas.’ <https://www.earthlawcenter.org/blog-entries/2019/10/the-lummi-nations-fight-for-rights-of-the-orcas>.

Samish Indian Nation. Conserving the Southern Resident Killer Whales. https://www.samishtribe.nsn.us/docs/default-source/natural-resources-documents/climatechange_srkw.pdf.

Northwest Treaty Tribes, A news service of the Northwest Indian Fisheries Commission. October 12, 2018. Tribes Support Southern Resident Killer Whale Task Force. <https://nwtreatytribes.org/tribes-support-southern-resident-killer-whale-task-force/>.

Resident killer whales and their habitat.⁶ A National Marine Fisheries Service feature story states that “Southern Residents are iconic in the Pacific Northwest and are important culturally and economically.”⁷

In 2018, the Southern Resident killer whale, J35, also known as Tahlequah, made international headlines when she carried her dead calf for 17 days on a journey of over 1,000 miles. In 2025, she carried another dead calf, this time for over 11 days.⁸ J35’s actions in both years sparked global conversations about the plight of Southern Resident killer whales and has led to increased advocacy for salmon restoration, reducing vessel noise, and limiting pollution in their habitat.⁹ J35’s mourning behavior continues to resonate with people worldwide, serving as a powerful reminder of the fragility of marine ecosystems and the urgent need for conservation efforts.¹⁰

As addressed in other comments, this proposed rule is not compelled by the best reading of the statutory text. Furthermore, the proposed regulation changes would have a significant individual or cumulative effect on the quality of the human environment and an environmental assessment, or an environmental impact statement, is required in accordance with the National Environmental Policy Act (NEPA). If the current regulatory definition of “harm” under the Endangered Species Act is rescinded, future project proposal reviews under NEPA, on a case-by-case basis, will not address the significant cumulative effects of this proposed regulatory change on the quality of the human environment.

⁶ The Governor’s Southern Resident Killer Whale Task Force made 49 recommendations for new investments, policies, and laws to help recover Southern Resident killer whales: <https://orca.wa.gov/progress/> and <https://orca.wa.gov/progress/all-recommendations/>.

See also the Government of Canada in partnership with Indigenous Peoples Oceans Protection Plan’s initiative to protect Southern Resident killer whales: <https://tc.canada.ca/en/initiatives/oceans-protection-plan/whales-initiative-protecting-southern-resident-killer-whale>.

⁷ NOAA Fisheries webpage. May 24, 2023. Celebrating the People and Partnerships Saving Southern Resident Killer Whales. <https://www.fisheries.noaa.gov/feature-story/celebrating-people-and-partnerships-saving-southern-resident-killer-whales>.

⁸ Associated Press. An orca that carried her dead calf for weeks in 2018 is doing so once again.

<https://apnews.com/article/orca-mother-mourns-carries-dead-calf-washington-0fd0d5a0731ed107496f646cbb673c83>

FOX 13 Seattle. January 2, 2025. Orca Tahlequah seen pushing second dead calf in WA waters.

<https://www.fox13seattle.com/news/orca-pushing-second-dead-calf>

People. January 3, 2025. Orca Known for Carrying Her Dead Calf for 17 Days in 2018 Is Grieving the Loss of New Calf in the Same Way. <https://people.com/orca-whale-known-for-carrying-dead-calf-for-17-days-grieving-another-loss-8768847>.

⁹ The Governor’s Southern Resident Killer Whale Task Force made 49 recommendations for new investments, policies, and laws to help recover Southern Resident killer whales: <https://orca.wa.gov/progress/> and <https://orca.wa.gov/progress/all-recommendations/>.

See also Canada’s Oceans Protection Plan’s initiative to protect Southern Resident killer whales: <https://tc.canada.ca/en/initiatives/oceans-protection-plan/whales-initiative-protecting-southern-resident-killer-whale>.

¹⁰ Coextinction. 2021 documentary film executive produced by Gloria Pancrazi, Elena Jean, Andrew Luba, Nicholas Castel, Victoria Obermeyer and PNW Protectors. Trailer: <https://youtu.be/phtDEvl63vc>.

The U.S. Fish and Wildlife Service and the National Marine Fisheries Service cannot fulfill their mandate to protect and recover the species listed under the Endangered Species Act without also protecting their habitats as required by the existing regulatory definition of “harm.”

Friends of the San Juans respectfully requests that you withdraw the proposed rule that rescinds the regulatory definition of “harm” under the Endangered Species Act or provide an environmental assessment, or an environmental impact statement, as required under the National Environmental Policy Act.

Sincerely,

A handwritten signature in black ink that reads "Lovel Pratt". The signature is written in a cursive, flowing style.

Lovel Pratt
Marine Protection and Policy Director