

## U.S. FISH & WILDLIFE SERVICE AND NATIONAL MARINE FISHERIES SERVICE PROPOSE REVISIONS TO ENDANGERED SPECIES ACT REGULATIONS

July 2018

The U.S. Fish and Wildlife Service (“Service”) and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (together “Agencies”) have jointly proposed revisions to regulations that implement portions of the Endangered Species Act (ESA).

The Agencies propose changes related to sections 4 and 7 of the ESA. Under section 4, the Agencies propose to revise the procedures for designating critical habitat, by requiring that the Agencies first evaluate currently occupied areas before considering unoccupied areas. The Agencies also propose to clarify when the Agencies may determine unoccupied areas are essential to the conservation of the species. Lastly, the Agencies seek to clarify that the decision to delist a species is made using the same standards as a decision to list a species in the first instance.

Under section 7, the Agencies propose to clarify how the Agencies consider proposed measures to avoid, minimize or offset adverse effects to listed species or their critical habitat during interagency consultations, and clarify how biological opinions and interagency submissions should be formulated. The Agencies also propose changes to the definition of “destruction or adverse modification” to clarify confusing language. The proposed change in definition is not intended to change the existing consultation process.

The U.S. Fish and Wildlife Service is also proposing to rescind its rule that automatically confers the same protections for threatened species as for endangered species, unless the Service promulgates a species-specific rule at the time of the final listing or reclassification. The change would only apply to future listings or down-listings of species. Species currently listed as threatened would retain the same protections as endangered species.

Once the proposed rules are published in the *Federal Register*, the public will have 60 days to submit written comments. The proposed rules can be viewed here:

- [Proposed Section 4 Rule](#) (listing and critical habitat)
- [Proposed Section 4\(d\) Rule](#) (protective regulations)
- [Proposed Section 7 Rule](#) (interagency cooperation)

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