December 22, 2025
ELECTRONIC SUBMISSION
ATTN: FWS-HQ-ES-2025-0029

John Tirpak
Division of Conservation and Classification
U.S. Fish and Wildlife Service
Department of the Interior
5275 Leesburg Pike
Falls Church, Virginia 22041

Re: Endangered and Threatened Wildlife and Plants; Regulations Pertaining to Endangered and Threatened Wildlife and Plants. Docket No. FWS-HQ-ES-2025-0029

Dear Mr. Tirpak,

I respectfully submit this comment in strong support of the proposal by the U.S. Fish and Wildlife Service (Service) to revise portions of the regulations to better align with the Endangered Species Act (ESA). Eliminating the "blanket rule" option in favor of solely using species-specific rules is consistent with the statute and more effectively targets protections to the particular risks each threatened species faces.

The Service Is Correct to Remove the "Blanket Rule" Option

The Service proposes to remove the "blanket rule" option, which automatically applies nearly all endangered-species prohibitions to threatened species unless the Service issues a species-specific rule. Going forward, the Service would rely only on species-specific rules for threatened species.

One key reason given is that "the statutory text, structure, and context make clear that Congress intended for the Service to determine what protections are needed for threatened species on a species-by-species basis." That explanation is correct, but it can be strengthened by identifying specific statutory language to show that Congress intended species-specific rules and never the "blanket rule" option.

In 16 U.S.C. 1533(d), Congress used discretionary language, directing that the Secretary "shall issue such regulations as he deems *necessary and advisable*" to conserve threatened species.[1] The phrase "necessary and advisable" envisions reasoned judgment and tailored policy choices, not automatic application under the "blanket rule" option.

[1] 16 U.S.C. 1533(d) (emphasis added).

When Congress intends automatic application, it knows how to do so. In 16 U.S.C. 1538(a)(1), Congress used mandatory language – "it is unlawful" – that automatically applies a comprehensive list of prohibited acts against endangered species.[2] If Congress intended threatened species to automatically receive prohibitions, it would have included those species within this same section, or otherwise could have used the same mandatory language in the statutory provisions relating to threatened species. Congress did neither, so the best way for the Service to effectuate Congressional intent is to provide different tiers of protection to endangered and threatened species, rather than to treat all listed species in the same blanketed manner.

The Service is also correct that species-specific rules is the better choice than the "blanket rule" option for conserving threatened species. Congress defined endangered species as those in "danger of extinction,"[3] which explains why it automatically imposed broad prohibitions in 16 U.S.C. 1538. By contrast, threatened species are "likely to become an endangered species within the foreseeable future."[4] As a result, they do not require the automatic application of nearly all endangered-species protections; instead, tailored protections are more effective at addressing the specific risks they face. Indeed, part of the point of protecting the threatened species at this stage is presumably so that the more rigid treatment that would be required by the "endangered" designation does not become necessary.

Conclusion

Overall, the proposed revisions better align the Service's regulations to the ESA, demonstrating the seriousness with which the Service treats its obligation to implement the "single, best meaning"[5] of the text of the ESA, though the explanation for removing the "blanket rule" option could be further improved. Thank you for the opportunity to comment.

Respectfully Submitted,
Austin Gae
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The Heritage Foundation[6]

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[2] 16 U.S.C. 1538(a)(1).
[3] 16 U.S.C. 1532(6).
[4] 16 U.S.C. 1532(20).
[5] *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).
[6] Affiliation and title provided for identification purposes only. I submit this comment in my personal capacity only and not as an employee of The Heritage Foundation.