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B-338603

August 4, 2026

The Honorable Shelley Moore Capito
Chairman
The Honorable Sheldon Whitehouse
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable Bruce Westerman
Chairman
The Honorable Jared Huffman
Ranking Member
Committee on Natural Resources
House of Representatives

Subject: *Department of the Interior, Fish and Wildlife Service; Department of Commerce, National Oceanic and Atmospheric Administration: Rescinding the Definition of “Harm” Under the Endangered Species Act*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Interior, Fish and Wildlife Service, and the Department of Commerce, National Oceanic and Atmospheric Administration (collectively, the Agencies) entitled “Rescinding the Definition of ‘Harm’ Under the Endangered Species Act” (RINs: 1018-BI38 & 0648-BN93). We received the rule on July 17, 2026. It was published in the *Federal Register* on July 14, 2026. 91 Fed. Reg. 43300. The stated effective date of the rule is September 14, 2026.

According to the Agencies, this rule rescinds the regulatory definition of “harm” in their Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*) regulations in parts 17 and 222 of title 50 of the *Code of Federal Regulations*.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). This rule was published in the *Federal Register* on July 14, 2026. 91 Fed. Reg. 43300. The Senate received the rule on July 20, 2026. 172 Cong. Rec. S4187 (daily ed. July 21, 2026). The House of Representatives received the rule on July 23, 2026. 172 Cong. Rec. H5206 (daily ed. July 30, 2026). The stated effective date of the rule is September 14, 2026. Therefore, the stated effective date is less than 60 days from the date of receipt by Congress.

Enclosed is our assessment of the Agencies’ compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions

about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact me at (202) 512-8156.

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

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Amanda Murnane
Fish and Wildlife Biologist
Fish and Wildlife Service

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE;
DEPARTMENT OF COMMERCE,
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
ENTITLED
“RESCINDING THE DEFINITION OF ‘HARM’ UNDER THE ENDANGERED SPECIES ACT”
(RINS: 1018-BI38 & 0648-BN93)

(i) Cost-benefit analysis

The Department of the Interior, Fish and Wildlife Service, and the Department of Commerce, National Oceanic and Atmospheric Administration (collectively, the Agencies) prepared an analysis of the costs and benefits of this rule. 91 Fed. Reg. 43300, 43313 (July 14, 2026). The Agencies estimated the rule would result in annualized quantified cost savings of \$361.3 million at a three percent discount rate and \$521.0 million at a seven percent discount rate. *Id.*

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

The Agencies certified that this rule will not have a significant economic impact on a substantial number of small entities. 91 Fed. Reg. at 43315.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

The Agencies determined that this rule will not have an effect on state, local, or tribal governments, in the aggregate, or on the private sector, of \$100 million in 1995 dollars, updated annually for inflation, in any one year. 91 Fed. Reg. at 43315.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On April 17, 2025, the Agencies published a proposed rule. 90 Fed. Reg. 16102. The Agencies stated that they received comments from various interested parties. 91 Fed. Reg. at 43302. The Agencies responded to comments in the rule. *Id.* at 43303.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

The Agencies stated that this rule contains no information collection requirements under the Act. 91 Fed. Reg. at 43316.

Statutory authorization for the rule

The Agencies promulgated this rule pursuant to section 1531 of title 16, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

The Agencies stated that the Office of Information and Regulatory Affairs in the Office of Management and Budget determined that this rule is significant under the Order. 91 Fed. Reg. at 43315.

Executive Order No. 13132 (Federalism)

The Agencies determined that this rule does not have federalism implications. See 91 Fed. Reg. at 43315.