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Subject: American Bird Conservancy comments opposing rescission of definition of "harm" under Endangered Species Act, Docket FWS-HQ-ES-2025-0034

Dear Director Souza and Assistant Director Shultz,

American Bird Conservancy ("ABC") respectfully submits these comments opposing the proposed revision of the definition of "harm" under the Endangered Species Act ("ESA").

ABC¹ is a non-profit corporation whose mission is to conserve wild birds and their habitats throughout the Americas, with over 31,000 members.

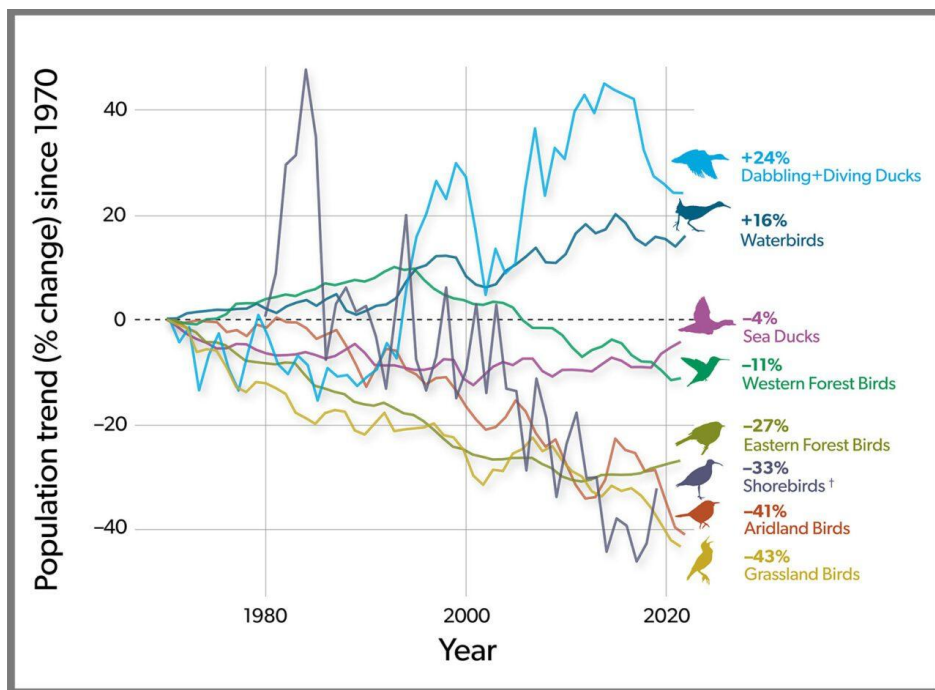
We show below that:

1. North American Birds are in grave decline.
2. The definition of "harm" must include habitat loss and degradation to stem that decline.
3. Habitat degradation and loss is multifaceted.
4. Including habitat loss and degradation in "harm" has led to species delistings.

1. NORTH AMERICAN BIRDS ARE IN GRAVE DECLINE.

North America has experienced a decline of nearly 3 billion birds since 1970.² Grassland birds – those that use grasslands as their primary breeding biome – are in greatest decline, having decreased by 53% since 1970.

The 2025 State of the Birds Report, authored by ABC, Ducks Unlimited, the Cornell Laboratory of Ornithology, the National Audubon Society, and others, finds that bird populations continue to decline.³



Long-term Population Trends for America's Birds, 2025 State of the Birds Report.

"Notably duck populations—a bright spot in past State of the Birds reports, with strong increases since 1970—have trended downward in recent years." -2025 State of the Birds Report

Similarly, a study of 495 North American bird species from 2007 to 2021, published May 1, 2025 in *Science*, reported that 75% of species were declining.⁴

2. THE DEFINITION OF "HARM" MUST INCLUDE HABITAT LOSS AND DEGRADATION TO ACHIEVE THE GOALS OF THE ESA

89 species of North American birds are currently protected under the ESA.⁵ The greatest threat to the survival of most of them is habitat loss or degradation.

"Harm" under the ESA is now defined to include "significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering."⁶ That definition ensures that listed bird species that rely on specific habitat types for sheltering, feeding, nesting, or breeding displays, are protected – and fosters their survival and recovery.

For many of these species, direct "take" is *not* a major threat to their survival. According to the US Fish and Wildlife Service website:

"Millions of acres of bird habitat are lost or degraded every year due to development, agriculture, and forestry practices. These rapidly accelerating impacts can be mitigated only through habitat restoration and protection."⁷ (Emphasis added.)

In short, the establishment and protection of critical habitat is important, but including non-designated habitat under "harm" is equally if not more important to the survival of listed species than preventing actions intended to directly kill them.

Accordingly, If the definition of "harm" is revised to exclude habitat and more closely align with "take," it will inevitably lead to significant declines in both listed and candidate species.

Here are just a few examples, drawn from different areas across the Country, of the importance of a broad definition of "harm" to the survival and recovery of currently listed species:

Red-cockaded Woodpecker

The Red-cockaded Woodpecker (*Picoides borealis*) depends on open pine forests across the Southeastern U.S. for nesting cavities and roosting.⁸ The understory of these pine forests must be burned frequently (every 1-3 years) to provide foraging habitat. The size of the pine forests is critically important to support the complex social and colonial life history of this species.⁹



Red-cockaded Woodpecker, Betty Rizzotti_U

After fifty years of tireless efforts by the US Fish and Wildlife Service and partners, including ABC, the Woodpecker was downlisted from endangered to threatened in 2024 -- thanks to habitat protection and restoration efforts made possible by the ESA.¹⁰ As habitat protection continues the bird could see a full delisting in future years.

Piping Plover – Great Lakes Population



Piping Plover, Ray Hennessy, Shutterstock

The Great Lakes Population of Piping Plover (*Charadrius melodus*) is listed as endangered due to a lack of protected nesting habitat along Great Lakes shorelines.¹¹ As water levels rise, beaches erode, and inadequate amounts of nesting habitat continue to be protected, we will continue to see this iconic shorebird decline. Other populations of Piping Plover, or other species with similar life histories, face similar threats.

Golden-cheeked Warbler

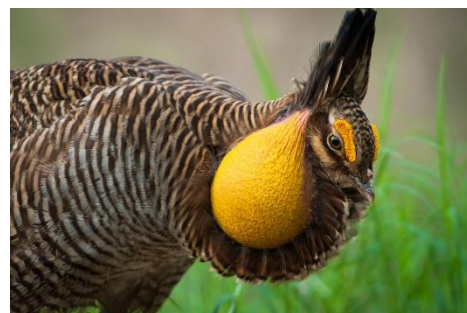
The Golden-cheeked Warbler (*Setophaga chrysoparia*), listed as endangered, depends on old growth ashe juniper (cedar) trees for feeding, nesting, and sheltering.¹² The loss woodlands due to habitat fragmentation and conversion poses a grave danger to the survival of this species.



Golden-cheeked Warbler, Al Perry

Attwater's Prairie Chicken

The Attwater's Prairie Chicken (*Tympanuchus cupido attwateri*) is a critically endangered species that which has been used as a test case for federal agencies developing new policies to implement the Endangered Species Act. It is almost solely reliant on open prairie. Yet today only 1% of Gulf Coastal Prairie habitat remains, meaning that *any* loss of prairie will have a devastating impact on this species, already on the brink of extinction.



Attwater's Prairie Chicken, Houston Zoo

Marbled Murrelet

The Marbled Murrelet (*Brachyramphus marmoratus*), listed as threatened, requires specific nesting conditions in Pacific coast mature and old growth trees to reproduce. Pairs rear only one chick per year. Loss of mature and old growth forests to logging reduces nesting opportunities, provides for invasion of predatory species,¹³ and may lead, not to recovery, but to an upgraded listing to endangered.



Left: Marbled
Murrelet in nest,
Thomas Hamer,
Hamer
Environmental

Right: Streaked
Horned Lark
Male, US Fish
and Wildlife
Service



Streaked Horned Lark

The Streaked Horned Lark (*Eremophila alpestris strigata*) is listed as threatened due to habitat loss from development, nest failure from agricultural practices, and disturbances from material dredging on the Columbia River.¹⁴ Protecting prairies and reducing habitat disturbance are the keys to this species' recovery.

Lesser Prairie-chicken



Lesser Prairie-chicken, Danita Delimont, SS

The Lesser Prairie-chicken (*Tympanus pallidicinctus cupido*) represents a case where habitat preservation is vital but playing out differently in two separate distinct population segments ("DPS") of the same species. The Southern DPS has faced greater historical habitat fragmentation and habitat loss. Continued habitat loss or degradation will have a greater effect on them compared to the Northern DPS, yet neither DPS is listed primarily due to direct take by humans.¹⁵

3. HABITAT DEGRADATION AND LOSS IS MULTIFACETED.

"Harm" as now defined means significant habitat modification or degradation that actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. For birds this harm can come in many forms.

Collisions

Bird collisions with windows and other human structures kills millions of birds each year. ABC evaluates bird-safe glass options and trains architects, landscape designers, and other professionals to reduce potential dangers to birds during the design processes. In areas where habitat is going to be degraded for a listed species, making bird-friendly changes to human structures can result in less overall danger.

For migratory species which may require ESA protections in future, an effective manner to mitigate their loss may be to reduce collisions with human structures. It may also be the case that a primary threat to the species is migration pathway interruptions and resulting collisions. The best way to conserve these species would be to reduce threats in their migratory pathway (habitat) by reducing the likelihood of collisions.

Pesticides

Pesticide use harms birds in ways other than through contact or ingestion. For instance, in the EPA's Vulnerable Species Pilot Program, the Attwater's Prairie

Chicken is listed as jeopardized by pesticide use due to a reduction in pollinators – i.e., fewer food resources.¹⁶

Accordingly, the US Fish and Wildlife Service and National Marine Fisheries Service evaluate pesticides not only on their overt toxicity, but also on how they impact the quality of habitat and the prey resources for a listed species.

This process is already viewed by the courts to be under representative of the actual harms posed by pesticides. Every year, scientific studies document the overwhelming presence of pesticides in the environment, the unexpected yet devastating ways they interrupt natural processes and food webs. Neonicotinoid insecticides, which are currently under registration review at EPA and awaiting a biological opinion,¹⁷ have already been show to impact every part of a bird's life and are a leading cause of North American bird declines due to impacts on prey resources for birds.¹⁸

In the volume and frequency with which they are currently used, pesticides are having an outsized effect on habitat for many listed and unlisted species. Redefining "harm" to exclude impacts on habitat will take away an important tool in species recovery and protection.

Habitat Degradation and Loss May Lead to New Listings



Golden-winged Warbler, Froede Jacobsen, SS

Improper management of resources, such as those which would constitute harm under a listing decision, is a threat to species that could be candidates for listing in the near future. For instance, the Golden-winged Warbler (*Vermivora chrysoptera*) is a species in severe decline in its breeding range (upper Midwest and Great Lakes).¹⁹ Over extraction and improper forestry

practices in its breeding range are having major negative impacts on this species. No major "take" threats are a key driver of its population collapse.

ABC is one of the organizations working on conserving this species and its habitat, including working with private forest owners. If these efforts are not enough to prevent species extinction, the Golden-winged Warbler will need ESA protections (and a definition of harm that includes habitat).

4. INCLUDING HABITAT LOSS AND DEGRADATION IN "HARM" HAS LED TO SPECIES DE-LISTINGS, ACHIEVING THE ESA'S GOALS.

Several bird species have been removed from listing under the ESA thanks in large part to protecting habitat crucial to their survival.



Kirtland's Warbler by Greg Homel, Natural Elements Productions

For example, the Kirtland's Warbler (*Setophaga kirtlandii*) was removed from the Act in 2019 after multiple decades as a listed species. Direct take was never a concern for this species. Habitat loss and nest parasitism were caused by landscape changes and the disruption of natural ecological processes, specifically wildfire.²⁰

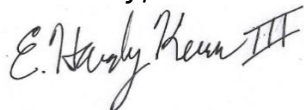
Without ESA listing, the US Forest Service may not have intervened in time to rescue this species from extinction. State natural resource agencies likely did not have sufficient capacity or landholdings to accomplish the population recovery on their own. Kirtland's Warbler's endangered status encouraged innovation in regional forest management, with benefits that extend far beyond the continued existence of the species.

Accordingly, including habitat loss and degradation in the definition of "harm" under the ESA will serve the Act's overall purpose in two ways: by protecting listed birds from further decline and extinction, and by fostering survival and recovery to the point where species may be safely delisted.

CONCLUSION

ABC strongly opposes the revision of the definition of "harm" under the ESA. To adequately protect birds in danger of going extinct, and achieve the goals of the Act, the impacts to habitat which will inevitably impact bird survival and recovery must be considered.

Sincerely,



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¹ <https://abcbirds.org/about/mission-and-strategy/>

² Rosenberg, K. et al. (2019). Decline of the North American Avifauna. *Science*, 366(6461).

<https://www.science.org/doi/10.1126/science.aaw1313>

³ <https://www.stateofthebirds.org/2025/executive-summary/>

⁴ Johnston, A. et al. (2025). North American bird declines are greatest where species are most abundant. *SCIENCE*, 388 (6476), pp. 532-537. <https://www.science.org/doi/10.1126/science.adn4381>

⁵ <https://ecos.fws.gov/ecp/report/species-listings-by-tax-group?statusCategory=Listed&groupName=Birds&total=106>

⁶ 50 CFR 17.3.

⁷ <https://www.fws.gov/library/collections/threats-birds>

⁸ <https://iris.fws.gov/APPS/ServCat/DownloadFile/257450>

⁹ <https://abcbirds.org/bird/red-cockaded-woodpecker/>

¹⁰ <https://www.fws.gov/press-release/2024-10/downlisting-red-cockaded-woodpecker-endangered-threatened>

¹¹ <https://abcbirds.org/bird/piping-plover/>

¹² <https://abcbirds.org/bird/golden-cheeked-warbler/>

¹³ <https://abcbirds.org/bird/marbled-murrelet/>

¹⁴ <https://wdfw.wa.gov/species-habitats/species/eremophila-alpestris-strigata#conservation>

¹⁵ <https://ecos.fws.gov/ecp/species/1924>

¹⁶ <https://www.epa.gov/pesticides/epa-finalizes-plan-protect-vulnerable-species>

¹⁷ <https://www.epa.gov/pollinator-protection/schedule-review-neonicotinoid-pesticides>

¹⁸ Mineau, P. and Kern, E.H. (2023). *Neonicotinoid insecticides: failing to come to grips with a predictable environmental disaster*. Report. www.abcbirds.org/2023neonicreport

¹⁹ <https://abcbirds.org/bird/golden-winged-warbler>

²⁰ <https://abcbirds.org/bird/kirtlands-warbler/#:~:text=About,%2C%20rather%20than%20yellow%2C%20rump.>