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The Pit Bull Still Bites: District Court Cuts Down Recent (And Potentially Future) Endangered Species Act Regulatory Amendments

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A March 30, 2026, decision from the U.S. District Court for the Northern District of California, in *Center for Biological Diversity v. U.S. Department of the Interior*, vacated key provisions of the Endangered Species Act (ESA) regulations, including several regulations from 2019 that were revised and/or reissued in 2024. This ruling arrives amid a swirl of potential changes to implementation of the ESA, and signals that courts will be closely scrutinizing forthcoming regulations for consistency with a statute that has long been labeled the "pit bull" of environmental statutes.

Last week's ruling halts four ESA regulations the court found were inconsistent with the statutory text: redefinition of "effects of the action" (50 C.F.R. § 402.02); consideration of non-binding mitigation measures (§ 402.14(g)(8)); redefinition of "destruction or adverse modification" (§ 402.02); and modification of the duty to request reinitiation of consultation (§ 402.16(a)). The Department of Justice had sought a stay or voluntary remand in light of a new round of proposed ESA regulations published by the U.S. Fish and Wildlife Service and National Marine Fisheries Service (collectively, the Services) this past November that mostly reinstated the 2019 rule, and which are expected to be finalized later this year. However, the court opted to grant summary judgment for plaintiffs instead, determining that the Center for Biological Diversity and other environmental advocacy organizations, would suffer harm from another year of unlawful ESA regulations and that there was value in letting the Services' subsequent rulemaking be informed by the court's judgment on the legality of the current rules.

The four 2019/2024 regulations that the court struck down each related to agencies' consultation obligations under ESA Section 7:

1. **Effects of the Action.** The 2019 rulemaking amended the definition of "effects of the action" to limit it to consequences that "would not occur but for the proposed action" and are "reasonably certain to occur." 50 C.F.R. § 402.02 (2019). The 2024 rulemaking left this definition in place. The court agreed with plaintiffs that this definition is contrary to the statutory text and arbitrary and capricious because the term "reasonable certainty" was more rigorous than the statutory standard of "likely" and undermined the ESA requirement that the Services use "best available" data.
2. **Nonbinding Mitigation Measures.** The 2019 rulemaking added language allowing the Services to consider nonbinding mitigation measures in preparing a biological opinion as part of a Section 7 consultation. The court concluded that this regulation violated the Services' statutory obligation to "insure" against jeopardy for protected species.
3. **Definition of "Destruction or Adverse Modification."** The 2019 rulemaking amended the definition of "destruction or adverse modification" of critical habitat (which the action agency and Services must "insure" is

avoided) to mean “a direct or indirect alteration that appreciably diminishes the value of critical habitat *as a whole* for the conservation of a listed species.” 50 C.F.R. § 402.02 (2019) (emphasis added). The court found that the modifier “as a whole” inappropriately restricted the scope of statutory protection.

4. **Duty to Request Reinitiation of Consultation.** Before the 2024 rulemaking, the Section 7 regulations required the action agency or the responsible Service to request reinitiation of consultation. 50 C.F.R. § 402.16(a) (2023). The 2024 rulemaking struck the reference to the Services, so that only the action agency could request reinitiation of consultation. See 50 C.F.R. § 402.16(a) (2024); 89 Fed. Reg. at 24279–80. The court found that the Services’ explanation of this change was insufficient under the Administrative Procedure Act, given that it is a reversal of a position that has been in place for 25 years.

The court rejected plaintiffs’ challenges to two other 2019 and 2024 regulations implementing ESA Section 4, one dealing with the definition of “foreseeable future” in listing threatened species, and another on the timing of critical habitat designations. The court also rejected plaintiffs’ National Environmental Policy Act (NEPA) challenge to the 2024 regulations for failure to analyze the environmental impacts of amendments to the ESA Section 4 regulations, finding that the use of a categorical exclusion was appropriate.

Since the November 2025 proposed rule included substantially similar versions of most of the regulatory changes vacated in this ruling, the second Trump administration’s impending final ESA regulations could be in for a rocky ride in the courts absent significant changes to the final rule. For these reasons, we anticipate the Services will appeal to the U.S. Court of Appeals for the Ninth Circuit in the hopes of keeping their ESA rulemaking on track.

For questions or to discuss the implications of this ruling on specific projects and industries, we encourage you to contact Troutman Pepper Locke’s attorneys in our Energy and Environmental + Natural Resources practices.

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