



Memorandum

Environment Committee

Lands Committee

Coal Policy Task Force

Minerals Policy Task Force

Katie Mills, Associate General Counsel

May 20, 2025

NMA Submits Comments on Two Endangered Species Act Rulemakings: (1) Proposal to List the Monarch Butterfly, (2) Proposal to Rescind the Definition of "Harm"

Yesterday, the National Mining Association (NMA) submitted comments on two recent Endangered Species Act (ESA) rulemakings. This includes the [proposal](#) by the U.S. Fish and Wildlife Service (FWS) to list the Monarch Butterfly under the ESA and designate critical habitat and the FWS and National Marine Fisheries Service (NMFS) (collectively, the Services) recent [proposal](#) to rescind the definition of "harm" under the ESA.

Monarch Butterfly

Recall, the FWS recently [reopened](#) its comment period for a proposed rule to list the monarch butterfly as a threatened species with protective regulations under section 4(d) of the ESA and to designate critical habitat for the species. See NMA's [memorandum](#) from April 4, 2025, for more information. The FWS originally issued the proposal in December 2024.

The NMA's [comments](#) took no position on the proposed listing of the butterfly. Instead, the NMA requested a 4(d) exclusion from the prohibition of section 9 take under the ESA for mining and mining activities should the FWS determine to list the monarch butterfly as a threatened species. The NMA pointed out that mining is not a significant source of take, and that a tailored exclusion would further the administration's priorities.

Recission of Definition of "Harm"

The Services proposed to rescind the regulatory definition of "harm" in the context of the ESA, citing the U.S. Supreme Court decision in *Loper Bright Enterprises v. Raimondo*, which determined agency regulations must match the single, best meaning of the statute. See NMA's [memorandum](#) from April 17, 2025, for more information.

The NMA's [comments](#) supported the Services recission of the regulatory definition of "harm" under the ESA because it has been abused historically by the Services to unnecessarily impede any habitat modification from industry. The NMA pointed to specific species examples of this overreach by the Services related to the Northern Long-Eared Bat and Canada Lynx. Our comments used those examples to support our recommendation that the Services issue guidance on how they will determine "take" under the ESA without a definition of "harm."

If you have any questions related to these comments, please contact me at kmills@nma.org.

National Mining Association . 101 Constitution Avenue, NW . Suite 500 East . Washington, DC
20001 . (202) 463-2600