



June 20, 2025

VIA ELECTRONIC TRANSMISSION

The Honorable Doug Burgum, Secretary
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Re: Comments on Request for Information on Regulatory Reform [Docket No. DOI-2025-0005]

Dear Secretary Burgum:

On May 16, 2025, the U.S. Department of the Interior (DOI) published in the Federal Register a Request for Information (RFI) on Regulatory Reform.¹ The DOI seeks comments and information to assist the DOI and its agencies in identifying existing regulations, guidance, paperwork requirements, and other regulatory obligations that can be modified or repealed, consistent with law. The DOI seeks to ensure that its administrative actions do not undermine the national interest, and it achieves meaningful burden reduction while continuing to meet statutory obligations, advance American energy independence, and ensure the responsible stewardship of the Nation's public lands and resources.² The Office of Advocacy (Advocacy) respectfully submits the following comments in response to the RFI.

I. About the Office of Advocacy

Congress established Advocacy under Pub. L. 94-305 to represent the views of small businesses and other small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA). As such, the views expressed by Advocacy are derived from input received from outreach to small businesses and do not necessarily reflect the views of the SBA or the Administration. Part of Advocacy's role under the Regulatory

¹ 90 Fed. Reg. 21504 (published May 16, 2025).

² *Id.*

Flexibility Act (RFA)³ is to assist agencies in understanding how regulations may impact small businesses and to ensure that the voice of small businesses is heard during the regulatory process.⁴ Congress crafted the RFA to ensure that regulations do not unduly inhibit the ability of small entities to compete, innovate, or comply with federal laws.⁵ Additionally, the RFA's purpose is to address the adverse effect that "differences in the scale and resources of regulated entities" has had on competition in the marketplace.⁶

II. Background

Regulatory burdens have increased within the United States with an overwhelming amount of red tape generated by federal agencies. As a result, President Trump has committed to a government-wide initiative aimed at unleashing prosperity, particularly for small entities, through deregulation.⁷ Advocacy works with federal agencies to assist in reviewing rules to determine the impact of the regulatory burden on small entities. Additionally, all agencies have been required to conduct retrospective reviews of their regulations since the RFA was enacted in 1980.⁸

To advance President Trump's deregulatory agenda, the DOI published a notice in the Federal Register on May 16, 2025, soliciting public input on federal regulations that may be candidates for repeal or revision.⁹ In this RFI, the DOI invites the public to identify regulations, guidance, policies, procedures, and other administrative actions that are outdated, overly complex, burdensome, or not consistent with law or administration policy. Advocacy commends the DOI for undertaking this review and for inviting the public to participate.

III. Advocacy Outreach and Summary of Small Entity Issues

In response to the DOI's RFI, Advocacy hosted a small business regulatory roundtable on June 4, 2025, to hear directly from small businesses and their representatives about which regulations are most burdensome and in need of review and reform.¹⁰ Nearly 120 people participated in Advocacy's roundtable, and many spoke and provided written materials. The following is a summary of the issues that were raised during Advocacy's roundtable and follow-up correspondence, submitted for DOI's consideration. Advocacy acknowledges that different small entities may have different viewpoints and perspectives on these issues.

³ 5 U.S.C. § 601 et seq.

⁴ Pub. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

⁵ *Id.* § 2(a)(4-5), 5 U.S.C. § 601 note (Findings and Purposes).

⁶ *Id.* § 2(a)(4), 5 U.S.C. § 601 note (Findings and Purposes).

⁷ *See, e.g.*, Exec. Order No. 14,192, 90 Fed. Reg. 9065 (Feb. 6, 2025); *see also* Exec. Order No. 14,219, 90 Fed. Reg. 10583 (Feb. 25, 2025).

⁸ *See* 5 U.S.C. § 610.

⁹ 90 Fed. Reg. 21504 (published May 16, 2025).

¹⁰ *See*, U.S. Small Bus. Admin., Off. of Advoc., *Small Business Regulatory Reform Roundtable* (June 4, 2025), <https://advocacy.sba.gov/2025/05/28/small-business-regulatory-reform-roundtable-wednesday-june-4-2025/>.

A. Paperwork Burdens

Small entities often face a deluge of recordkeeping and reporting requirements from the federal government, including DOI and its subagencies. The Paperwork Reduction Act (PRA) is meant to minimize the paperwork burden on the public and state, local, and tribal governments,¹¹ and requires the Office of Management and Budget (OMB) to review and approve agency collections of information.¹² Even with the PRA, however, DOI and its subagencies have almost 400 active collections of information, resulting in almost 15 million annual burden hours and more than \$315 million in annual costs, according to OMB.¹³ DOI currently conducts several information collections that impose significant paperwork burdens on the public, including 2 new collections approved in 2024 on BLM's Onshore Oil and Gas Operations and Production (\$35.4 million) and Communications Uses Program, Cost Recovery Fee Schedules, and Section 512 of the Federal Land Policy and Management Act for Rights-of-Way (\$15.8 million).¹⁴ DOI should assess whether the scope of information collections can be narrowed or whether the frequency of reporting can be lessened.

Small Business Impacts: Small entities impacted by the DOI's regulations have expressed concerns that they must stockpile resources and spend business hours to ensure forms are completed on time rather than concentrate on operating successful businesses. Further, they are responsible, and held accountable, for monitoring and appropriately reacting to any updates the DOI makes during the year. Streamlining forms and clarifying the steps small businesses need to take to comply with the DOI's paperwork requirements will better allow small businesses to thrive and innovate.

Small Business Recommendation: Advocacy encourages the DOI to thoroughly review and streamline existing forms for ease of use for small entities.

B. Approvals for Equipment Used in Measurement of Crude Oil and Natural Gas

Issue No. 1

Delays in Obtaining Approval: Federal regulations for Onshore Oil and Gas Production Measure of Oil (43 CFR 3174) and Measurement of Gas (43 CFR 3175) require the DOI Bureau of Land Management (BLM) Production Management Team (PMT) to approve all parts of equipment used

¹¹ See Paperwork Reduction Act of 1995, 44 U.S.C. § 3501(1).

¹² See 44 U.S.C. § 3504(c).

¹³ See Off. of Info. & Regul. Aff., Inventory of Currently Approved Information Collections, <https://www.reginfo.gov/public/do/PRAMain> (choose "Department of Interior" from dropdown under "Current Inventory"; then click "Submit") (last accessed June 9, 2025).

¹⁴ https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202311-1004-006;
https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202310-1004-001

in the measurement of crude oil and natural gas from Federal and Indian leases.¹⁵ Parts include make, model, size, software version, and firmware version. Equipment that was in operation prior to the regulations becoming effective is not grandfathered in and, therefore, must be replaced or updated. Small business representatives state the PMT has neither the personnel nor expertise to approve equipment in a timely manner, which often results in equipment not being approved for years.

Small Business Impacts: Small businesses have reported between 2- and 5-year wait times for equipment approvals. Approval delays from the PMT have significant repercussions for small businesses, particularly regarding their operations and supply chains. Small business owners often operate with limited financial resources and tight budgets. When there is no clear timeline for equipment approval, it becomes exceedingly difficult to plan for necessary replacements or upgrades. This uncertainty can lead to financial strain, as businesses may be forced to allocate funds for equipment that may not be approved in a timely manner.

Small oil and gas operators have raised concerns that the lengthy approval process has slowed down operations and escalated project costs in some instances. Each time a new type of equipment is approved, modifications to existing plans are required. At times, this has led to additional labor, materials, or delays that resulted in lost revenue. Producers, who rely on accurate measurement devices to quantify the amount of oil and gas extracted, have also raised concerns that delays in the approval of these devices have led to inaccurate reporting of production volumes, resulting in revenue loss and compliance issues with regulatory bodies.

The approval process also adds layers of complexities to necessary upgrades. Manufacturers engaged in the development of new measurement technologies need to stay competitive by upgrading equipment and technology, such as making updates to firmware or software. Currently, any such change must be approved by the PMT. Small manufacturers have said the uncertainty surrounding approval timelines have hindered their ability to implement these upgrades effectively. Delays not only affect their operational efficiency but also impact their ability to meet customer demands in a timely manner, which has resulted in the loss of customers and revenue.

Small Business Recommendation: 43 CFR 3174 and 43 CFR 3175 circumvent Circular A-119, which “directs agencies to use standards developed or adopted by voluntary consensus standards bodies rather than government-unique standards.”¹⁶ The BLM should rescind 43 CFR 3174 and 43 CFR 3175, and rely on voluntary consensus standards for measurement equipment, as directed by Circular A-119. Rescinding these regulations and utilizing Circular A-119 will give small

¹⁵ See 43 CFR §§ 3174, 3175; see also 81 Fed. Reg. 81462 (Nov. 17, 2016).

¹⁶ See OFF. OF MGMT. & BUDGET, OMB CIRCULAR A-119: FEDERAL PARTICIPATION IN THE DEVELOPMENT AND USE OF VOLUNTARY CONSENSUS STANDARDS AND IN CONFORMITY ASSESSMENT ACTIVITIES 14, https://www.whitehouse.gov/wp-content/uploads/2020/07/revised_circular_a-119_as_of_1_22.pdf (effective Jan. 27, 2016).

businesses greater certainty about what products to use, what their equipment costs and timelines will be, and will reduce their compliance costs.

Issue No. 2

Lack of Coordinated Approval Process: Measurement devices submitted to the PMT for approval are not processed systematically or predictably. This lack of coordinated approval process can lead to significant disparities in market access among manufacturers.

One example provided by small manufacturers is the Coriolis flow meter. If the PMT approves the meter from one manufacturer before approving the same type of meter from another manufacturer, the PMT effectively grants the approved manufacturer a temporary monopoly or an unfair competitive advantage.

Small Business Impacts: When only one manufacturer's device is approved, small businesses are restricted to purchasing from that single source. This limits competition in the market, which can lead to higher prices and fewer options. Small businesses, which often rely on cost-effective solutions, struggle to find suitable equipment that fits their budget and operational needs. It also limits the diversity of products that enables firms to specialize and innovate.

The manufacturer with approved devices may take advantage of their monopoly to set higher prices, knowing that small businesses have no alternative options. This strains the already tight budgets of affected small business owners, forcing them to either absorb higher costs or compromise on quality, both of which can adversely affect their operations.

The uneven approval process can also lead to long-term market imbalances, where certain manufacturers dominate due to the timing of their approvals. This creates an environment where smaller or emerging manufacturers struggle to gain traction, ultimately stifling innovation and diversity in the marketplace.

Small Business Recommendation: The BLM should rescind 43 CFR 3174 and 43 CFR 3175 and rely on voluntary consensus standards for measurement equipment, as directed by Circular A-119.¹⁷ Rescission of these regulations directly decreases the possibility that a manufacturer will gain a monopolistic position amongst competitors due to a government-instituted process, and rescission reduces costs of compliance.

C. ESA Definition of Harm

Issue: The definition of "harm" under the Endangered Species Act (ESA) determines what activities can be regulated or prohibited in order to protect endangered or threatened species. The Fish and Wild Life Service (FWS) definition of "harm," which has been in place since 1981, includes "significant habitat modification or degradation where it actually kills or injures wildlife

¹⁷ *Id.*

by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.”¹⁸ The term “harm” is also part of the ESA’s definition of “take,” which means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”¹⁹ The duplicative definitions of harm and take have created regulatory confusion for small entities seeking to comply with the ESA.

Small Business Impacts: The current definition of “harm” presents challenges for small entities because they do not possess the necessary expertise to properly define where a habitat begins and ends nor the ability to properly assess if an activity has impaired breeding, spawning, rearing, migrating, feeding, or sheltering. This can lead to costly scenarios where small entities violate the ESA unintentionally, and/or stop economic activity and forego opportunities out of fear of triggering vague ESA requirements. The economic impact on small businesses is likely to be considerable as many sectors heavily represented by small businesses are affected, such as agriculture and construction.

Small Business Recommendation: The FWS proposed to withdraw its definition of “harm” on April 17, 2025.²⁰ This would allow regulated entities to rely solely on the definition of “take,” which focus on the species itself, and not vague assumptions about its habitat. Advocacy supported this change in a May 19, 2025, comment letter.²¹ Rescinding the 1981 definition of “harm” will help to prevent scenarios where small entities are held responsible for ESA violations that they had no knowledge of or intent to cause.

D. Recent ESA Regulatory Updates

Issue: In 2024, the FWS and National Oceanic and Atmospheric Administration (NOAA) finalized a series of changes to ESA regulations.²² The changes affected ESA provisions in the following areas: designated critical habitat for protected species, prohibited activities and takings of protected species, extended protections for endangered species to threatened species, and outlined coordination between agencies to ensure federal activities do not impact protected species.

Advocacy held a roundtable to discuss these changes on August 1, 2023. During that roundtable multiple small entity representatives expressed concern with the changes and the general lack of

¹⁸ 50 CFR § 17.3.

¹⁹ 16 U.S.C. § 1532(19).

²⁰ 90 Fed. Reg. 16102 (Apr. 17, 2025).

²¹ See, U.S. Small Bus. Admin., Off. of Advoc., Comment Letter on Reducing ESA’s Burden on Small Entities (May 20, 2025), <https://advocacy.sba.gov/2025/05/20/advocacy-supports-reducing-esas-regulatory-burdens-on-small-entities/>.

²² Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation, 89 Fed. Reg. 24268 (April 5, 2024), Endangered and Threatened Wildlife and Plants; Listing Endangered and Threatened Species and Designating Critical Habitat, 89 Fed. Reg. 24300 (April 5, 2024), Endangered and Threatened Wildlife and Plants; Regulations Pertaining to Endangered and Threatened Wildlife and Plants, 89 Fed. Reg. 23919 (April 5, 2024).

detail. Advocacy filed a comment letter on August 21, 2023, stating that the changes decrease the predictability small businesses need to understand and meet their regulatory responsibilities.²³

Small Business Impacts: Small businesses are directly impacted by the ESA. ESA regulatory changes modify existing permitting requirements and could result in increased compliance costs and delays for projects involving small businesses. Small businesses have also told Advocacy that the changes were confusing and vague.

In particular, critical habitat designations impose a significant burden on small entities, especially in instances where the FWS improperly designates an area.²⁴ Critical habitat designations delay infrastructure projects, development projects, and necessary repairs. Often, small entities must wait for more than a year for a consultation and biological assessment finding of “not likely to adversely affect” the species.²⁵ In some cases, the ESA process for infrastructure projects, which small businesses work on and benefit from, has taken longer than 3 years.²⁶

Additionally, several of the changes made to the ESA expand into vague areas of the statute’s authority, making it hard for a small business to know whether they are in compliance. For example, one change states “all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action but that are not part of the action,”²⁷ which small businesses state is impossibly vague. Other changes in the 2024 rule removed the requirement that areas unoccupied by a species contain one or more physical or biological features essential to the conservation of the species and allow critical habitat to be designated solely on the basis of the FWS determining it to be “essential for the conservation of the species.”²⁸ These changes expand the scope of the ESA in a manner that

²³ See, U.S. Small Bus. Admin., Off. of Advoc., Comment Letter on Updates to the Endangered Species Act (Aug. 22, 2023), <https://advocacy.sba.gov/wp-content/uploads/2023/08/Comment-Letter-ESA-Revisions-508c.pdf> p. 11.

²⁴ See, U.S. Small Bus. Admin., Off. of Advoc., Comment Letter on Proposed Designation of Critical Habitat for Gunnison Sage-Grouse (Dec. 2, 2013), <https://www.regulations.gov/comment/FWS-R6-ES-2012-0108-0636>. See also, U.S. Small Bus. Admin., Off. of Advoc., Comment Letter on Proposed Designation of Critical Habitat for the New Mexico Jumping Mouse (July 15, 2013), <https://www.regulations.gov/comment/FWS-R2-ES-2013-0014-0005>; U.S. Small Bus. Admin., Off. of Advoc., Comment Letter on Proposed Revisions to the Regulations for Impact Analysis for Critical Habitat (Jan. 31, 2013), <https://www.regulations.gov/comment/FWS-R9-ES-2011-0073-0085>; U.S. Small Bus. Admin., Off. of Advoc., Comment Letter on Proposed Designation of Revised Critical Habitat for Southwestern Willow Flycatcher (Oct. 11, 2011), <https://www.regulations.gov/comment/FWS-R2-ES-2011-0053-0021>.

²⁵ 16 U.S.C. § 1536 describes the process for consulting with the Services when an action is to occur in an area where a species is present or where critical habitat has been designated. The Services then issue biological assessments to identify species or habitat that may be affected, and whether the action is likely to result in destruction or adverse modification of habitat. It is this process that results in delays to small businesses.

²⁶ See Pac. Nw. Waterways Ass’n, Comment Letter on Proposed Rule on Endangered and Threatened Species: Interagency Cooperation (Aug. 1, 2023), <https://www.regulations.gov/comment/FWS-HQ-ES-2021-0104-45203>; Lake Charles Harbor & Terminal Dist., Comment Letter on Proposed Rule on Endangered and Threatened Species: Interagency Cooperation (Aug. 9, 2023), <https://www.regulations.gov/comment/FWS-HQ-ES-2021-0104-70362>.

²⁷ 89 Fed. Reg. 24268, 24271 (Apr. 5, 2024) (emphasis added).

²⁸ 89 Fed. Reg. 24300, 24319 (Apr. 5, 2024).

makes compliance difficult for small entities. For example, how can a small business know the consequences of an action that is “not part of that action?” Additionally, if there is nothing physically on an area of land that is needed for the conservation of a species, how can a small business be expected to treat that area as “essential”?

The revisions also removed a requirement that determinations of critical habitat are “not prudent” when threats to a species habitat are from causes which cannot be remedied through management actions.²⁹ This transforms critical habitat from a means in which small entities can help reestablish a species, into a regulatory burden with no goal or endpoint. If the purpose of designating a critical habitat is to develop a plan by which a species can be preserved through the management of that habitat, then it stands to reason that critical habitat may “not be prudent” in instances where management actions will have no impact on the species.

Further, the revisions apply an approach that treats all threatened species as endangered.³⁰ Small business stakeholders expressed a need for ESA regulations to be as specific and narrowly tailored as possible. Unfortunately, these revisions take the exact opposite approach. Rather than identifying threatened species which require additional protection and crafting rules to create species-specific plans, the FWS instead adopted a “one size fits all” approach for all threatened species. While this may be easier from an administrative point of view, it creates additional burdens for the regulated public, which include small businesses.

Finally, the revisions add language directing critical habitat determinations to be made “without reference to possible economic or other impacts of such determination.”³¹ Critical habitat decisions routinely impact communities, individuals, and small businesses. Advocacy believes not only that the economic impacts of critical habitat decisions should be considered, but that the FWS should provide a regulatory impact analysis (RIA) and a Regulatory Flexibility Act analysis to better inform the public of the impacts of any listing as critical habitat designation. The FWS’s duty to inform the public falls short with these revisions because no such analyses were provided.

Small Business Recommendation: On February 3, 2025, the Secretary of the Interior signed Secretarial Order 3418, *Unleashing American Energy*, directing DOI to “suspend, revise, or rescind” the 2024 changes to ESA regulations.³² Advocacy supports this Order and recommends a rescission of these ESA revisions.

²⁹ *Id.* at 24,315.

³⁰ 89 Fed. Reg. 23919 (Apr. 5, 2024).

³¹ 89 Fed. Reg. 24300, 24307 (Apr. 5, 2024).

³² U.S. DEP’T OF THE INTERIOR, SEC’Y ORDER NO. 3418 – UNLEASHING AMERICAN ENERGY (Feb. 3, 2025), <https://www.doi.gov/document-library/secretary-order/so-3418-unleashing-american-energy>.

E. Mexican Gray Wolf

Issue: The Mexican gray wolf is currently listed as endangered under the ESA.³³ Additionally, in 1998, the FWS designated a Mexican gray wolf nonessential experimental population in portions of Arizona and New Mexico under section 10(j)³⁴ of the ESA.³⁵ The 10(j) designation allowed the FWS to introduce the wolf into a suitable natural habitat outside of its natural range.³⁶

Small business Impacts: Small businesses in Arizona and New Mexico have been impacted by the reintroduction of the wolf. Specifically, small ranchers and farmers have raised concerns about destruction of livestock as a result of the increased wolf population and barriers to being compensated for damage to their businesses. Requirements to prove livestock have been killed by wolves have been described as overly cumbersome, and there are different views on the value of damages caused by the wolves.

Recently, at a hearing before the House Committee on Natural Resources on March 4, 2025, a cattle rancher testified that the wolf had caused \$320,000 in costs to their ranch in 2024.³⁷ Specifically, these costs included “extra trips to the mountain to check cattle when wolves are close to cattle, extra labor to haze wolves, decrease in calf weights at weaning time, decline in the number of cows re-breeding, and equipment depreciation from extra wear and tear.”³⁸

The problems faced by farmers and ranchers stemming from the wolf population are not new. In 2015, officials from Catron County, New Mexico (a county with a population of 3,795 people³⁹) testified during a Small Business Administration Regulatory Fairness Hearing that the county had suffered \$50,000 in direct economic losses from livestock production.⁴⁰ This loss also negatively impacted the county’s restaurants, lodging, grocery stores, and gas stations. The impacts from the wolf in Catron County have grown to be so severe that, in April 2025, the county declared a state of emergency because of the wolves.⁴¹

³³ 80 Fed. Reg. 2488 (Jan. 16, 2015).

³⁴ 16 U.S.C. §1539 (j)(1).

³⁵ 63 Fed. Reg. 1752 (Jan. 12, 1998). This was revised in both 2015 and 2022. 80 Fed. Reg. 2512 (Jan. 16, 2015); 87 Fed. Reg. 39348 (July 1, 2022).

³⁶ See U.S. FISH & WILDLIFE SERV., WHAT IS A 10(J) RULE? (Oct. 2018), <https://www.fws.gov/sites/default/files/documents/ESA-section10%28j%29-fact-sheet.pdf>.

³⁷ *Understanding the Consequences of Experimental Populations Under the Endangered Species Act Before the H. Com. On Nat. Res.*, 119th Cong. 5 (2025) (testimony of Dalton Dobson, Arizona Farm Bureau Rancher) <https://docs.house.gov/meetings/II/II15/20250304/117958/HHRG-119-II15-Wstate-DobsonD-20250304.pdf>.

³⁸ *Id.*

³⁹ See U.S. Census Bureau, *Quick Facts, Catron County, New Mexico*, <https://www.census.gov/quickfacts/fact/table/catroncountynewmexico/PST045224> (last updated July 1, 2024).

⁴⁰ Testimony of Anita Hand, Catron Cnty., NM before the U.S. Small Business Administration Regulatory Fairness Board, Regulatory Fairness Hearing (Oct. 14, 2015) (on file with Advocacy).

⁴¹ Silver City Daily Press, *Catron County Calls for Lethal Force Against Wolves* (Apr. 12, 2025), <https://www.scdailypress.com/2025/04/12/catron-county-calls-lethal-force-wolves/>.

Currently, the wolf population has exceeded the FWS's recovery goals. In 2022, a minimum of 242 wolves were observed in the U.S., while the target set by the FWS was 145.⁴² Specifically, the FWS has noted "the Mexican wolf population in the United States has surpassed interim abundance and release targets, as well as 2017 model predictions for gene diversity and population growth."⁴³

Small Business Recommendation: The FWS should delist the Mexican gray wolf as an endangered species and turn over its management to the states. The wolf population's recovery in the U.S. has exceeded the expectations of the FWS, meaning the ESA regulations accomplished their goal. Small ranchers and farmers in Arizona and New Mexico should not be unduly burdened by federal agency decisions that supersede duly established targets. If the FWS does not delist the wolf, it should reevaluate the impact of continued regulation on small entities to fully account for all the costs imposed on small entities. Future regulation of the Mexican gray wolf, if continued, should properly compensate small businesses for their losses and be responsive to local needs to avoid provoking declarations of states of emergency.

F. Federal Wildlife and Plant Permitting Regulations

Issue: Under permitting regulations adopted in 1974,⁴⁴ an application for an ESA permit or its renewal can be denied if an applicant has previously been "assessed a civil penalty or convicted of any criminal provision of any statute or regulation relating to the activity for which the application is filed, if such assessment or conviction evidences a lack of responsibility." Small businesses have raised concerns about the vagueness of the phrase "evidences a lack of responsibility," which affords the FWS wide discretion. Additionally, FWS Order 212 (which may or may not be in force) directs "strict implementation" of these permitting rules,⁴⁵ which can encourage disproportionate penalties for minor violations.

Small Business Impacts: These regulations, interpreted through FWS Order 212, have been used to deny a small business a wildlife export permit because of a single misdemeanor violation from seven years ago. Small businesses that depend on wildlife and plant permits are concerned that the

⁴² See U.S. Fish & Wildlife Serv., *5-Year Evaluation Reveals Mexican Wolf Population Surpassing Recovery Goals in the United States* (Dec. 20, 2024), <https://www.fws.gov/press-release/2024-12/mexican-wolf-population-surpassing-recovery-goals-united-states>.

⁴³ U.S. FISH & WILDLIFE SERV., 5-YEAR EVALUATION OF THE MEXICAN WOLF RECOVERY STRATEGY 5 (Dec. 2024), https://www.fws.gov/sites/default/files/documents/2024-12/5-year-evaluation-of-the-mexican-wolf-recovery-strategy_508-compliant.pdf.

⁴⁴ 50 C.F.R. §13.21(b)(1).

⁴⁵ U.S. FISH & WILDLIFE SERV., DIRECTOR'S ORDER NO. 212 - USING AVAILABLE LEGAL AND REGULATORY AUTHORITY TO DENY WILDLIFE VIOLATORS FROM OBTAINING FEDERAL WILDLIFE-RELATED PERMITS AND LICENSES (Dec. 9, 2015), <https://www.fws.gov/policy-library/do212>. Small entities have indicated to Advocacy that there is some question as to whether this Order is still in effect.

overly strict and possibly arbitrary application of the permitting regulations creates an undue burden.

Small Business Recommendation: The phrase “evidences a lack of responsibility” should be changed to “evidences a pattern of irresponsibility.” Such language would clarify that a permit denial must be based on more than just a single technical violation. Additionally, the FWS should add a statute of limitations, such as five years,⁴⁶ beyond which prior violations would not be considered. This would achieve the objective of keeping bad actors from receiving permits while also ensuring small businesses are not overly penalized for minor violations.

G. Proposed Listing of 4 Species of Sturgeon as Endangered Species

Issue: the FWS has proposed to list four species of sturgeon as endangered species⁴⁷ without differentiating between farm and wild raised sturgeon.

Small Business Impacts: One small business that raises sturgeon has invested nearly \$700,000 in its operations, which could be at risk if the fish are listed as endangered without an exemption for aquaculture. This business generates nearly \$1.8 million in revenue per year raising sturgeon.

Small Business Recommendation: The ESA has previously recognized domesticated species as distinct from their wild counterparts.⁴⁸ FWS has recognized situations where species that have been held in captivity for a long period have developed into a separate and distinct domesticated form of the species and considered to be a separate taxonomic species or subspecies. This policy should be applied to farm-raised sturgeon. FWS should not designate farm-raised sturgeon as endangered if they proceed with a rule on the sturgeon’s endangered species status.

H. ESA Regulations Restricting the Trade of Beluga Sturgeon

Issue: Aquaculture production is a viable tool for both conservation and local economic development. However, ESA regulations are unnecessarily restricting the operations of small businesses in the aquaculture industry. Current FWS regulations prohibit the import of beluga eggs and fingerlings, which aquaculture businesses need to sustain their operations.⁴⁹

⁴⁶ Five years is the standard used in 50 C.F.R. §13.21(c)(2) for revoking a permit when its terms are violated.

⁴⁷ 87 Fed. Reg. 31,834 (May 25, 2022).

⁴⁸ Specifically, FWS has recognized “situations where members of a species have been held in captivity for a sufficiently long period that they have developed into a separate domesticated form of the species, including where the domesticated form is sufficiently distinct to be considered a separate taxonomic species or subspecies.” 80 Fed. Reg. 34500, 35401 (June 16, 2015).

⁴⁹ 70 Fed. Reg. 10493 (Mar. 4, 2005).

Small Business Impacts: If the restrictions on beluga eggs were modified, one small business could generate an additional \$2.1 million in revenue per year, allowing them to hire additional employees and continue supporting existing conservation efforts.

Small Business Recommendation: The FWS should lift the restrictions on importation of beluga eggs and fingerlings for domestic aquaculture. These reforms would remove unnecessary regulatory restrictions and allow small businesses in the aquaculture industry to reach their full potential. Additionally, the domestic aquaculture industry can play a vital role in species conservation efforts by reducing reliance on imported species while also increasing species populations.

I. Parental Stock Policy Regulations

Issue: FWS regulations⁵⁰ require wildlife importers and exporters to provide proof of a lawful export of wild specimens bred in captivity for species from countries with laws relating to exports of native wildlife. It is often not possible to obtain this information for a variety of reasons. Specifically, many traded species have been captive-bred for decades (even before a country may have adopted restrictive laws). Additionally, nations, including the U.S., have limits on the amount of time this information, if kept, must be retained.

Small Business Impacts: These regulations have severely restricted commerce in a growing number of commonly traded species for small businesses. One small business reported a loss of \$383,558 in annual export sales due to FWS' Parental Stock Policy regulations and has stopped wildlife breeding due to the high costs of housing and feeding the animals.

Small Business Recommendation: FWS should revise the definition of "parental stock" to reflect appropriate flexibility. For example, small businesses advocated a new definition could be, "Parental stock means those specimens that produced subsequent generations of captive specimens at an individual captive breeding operation." Further, FWS should provide guidance clarifying that the term "parental stock" is distinct from "founder stock" (the original breeding or propagating specimens taken from the wild) unless a particular breeding operation initiated its line of captive-bred specimens from wild specimens or supplemented its operations with wild specimens. This change will remove regulatory burdens for small wildlife breeders by restoring international trade in common forms of wildlife, including reptiles and amphibians, arachnids, birds, etc., for domestic small businesses. It will also lift the stigma some wildlife breeders face from the presumption that their product is the offspring of unlawfully traded parental stock.

⁵⁰ 50 C.F.R. §23.5 (definition of "parental stock"); §23.60(b) (legal acquisition determinations); §23.26(d)(2) (regarding validity of a CITES document); §14.52 (clearance of imported wildlife).

J. Captive Bred Wildlife (CBW) Permit Program

Issue: The CBW permit program⁵¹ allows businesses, such as zoos, to transfer ESA-listed species in interstate commerce. Small businesses have expressed frustration with the lack of consistency in issuing CBW permits and the time it takes for permit renewals. Specifically, since the inception of the program in 1979, these permits have historically been widely available. However, small businesses are concerned that qualified applicants are being denied based on criteria not required by law or statute.

Small Business Impacts: Small businesses have reported to Advocacy wait times between 19 months and three years to obtain or renew a CBW permit. These delays as well as the lack of transparency and objective standards in permitting decisions have left small businesses that need a CBW permit in limbo and created uncertainty for permit holders whose CBW has expired.

Suggested Remedy: The FWS should administer the program as originally intended, granting permits to all qualified applicants, and adopt a timeframe of 45 days for CBW permitting decisions. Additionally, when a permit or permit renewal is denied, the FWS should provide the applicant with reasons for the denial, in writing. Permit denials should be based on the qualifying factors in the CBW regulations.⁵² These modifications would provide regulatory certainty for small businesses depending on the CBW permit program.

K. DOI National Environmental Policy Act (NEPA) Implementing Regulations

Issue: On January 20, 2025, President Trump signed Executive Order (EO) 14154, *Unleashing American Energy*, which directed the Council on Environmental Quality (CEQ) to provide guidance on implementing NEPA to expedite and simplify the permitting process.⁵³ On February 19, 2025, CEQ issued guidance directing federal agencies to “revise or establish their NEPA implementing procedures (or establish such procedures if they do not yet have any) to expedite permitting approvals.”⁵⁴ President Trump’s EO and CEQ’s accompanying guidance present an opportunity for DOI to reduce cost and delay in the NEPA review process for all activities regulated by the agency.

⁵¹ 50 C.F.R. §17.21(g) (Captive-bred wildlife).

⁵² *Id.*

⁵³ E.O. 14154, *Unleashing American Energy*, 90 Fed. Reg. 8353, §5(c) (Jan. 29, 2025).

⁵⁴ Memorandum from Katherine Scarlett, Chief of Staff, Council of Env’t Quality, to Heads of Federal Departments & Agencies, *Implementation of the National Environmental Policy Act*, 1 (Feb. 19, 2025), <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/CEQ-Memo-Implementation-of-NEPA-02.19.2025.pdf>.

Small Business Impacts: Advocacy supported CEQ’s guidance because small entities are directly impacted by the NEPA process.⁵⁵ The projects which undergo NEPA review are built by and provide direct benefits to small businesses.⁵⁶ Small businesses have told Advocacy that current NEPA documentation requirements as well as confusing and inconsistent application processes are a drain on their limited staff resources. These confusing processes also often require these small businesses to turn to outside experts to navigate these processes, an additional added expense that strains their financial resources and diverts resources away from their businesses. Some small businesses also operate in areas of the country with weather-shortened construction seasons. Delays in processing permits from DOI bureaus can push much needed construction and maintenance projects into the next season.

In 2024, the Fiscal Responsibility Act (FRA)⁵⁷ established a two-year time limit for NEPA environmental impact statements (EIS).⁵⁸ However, CEQ’s own data shows that less than half of EIS documents were completed within the FRA’s two-year limit in 2024.⁵⁹

In discussions with small entity representatives in the mining sector, Advocacy was told that an EIS can take anywhere from 7 to 10 years. One industry representative explained that they were working on a project where the process for a supplemental EIS took longer than the original EIS. Small businesses told Advocacy that environmental assessments of 2 to 4 years were not uncommon. Additionally, confusion over the NEPA process often leads to litigation, which adds an average of 4.2 years to a project’s completion time.⁶⁰ This impacts the small businesses who both build and benefit from the projects.

Another small business reported NEPA delays of more than two years to install fiber under a BLM managed road even though another provider’s facilities were already present under the same road. The project was part of an effort to provide network redundancy, including for public safety voice traffic. Even though there was already a similar project in the same space, duplicative NEPA regulations required the small business to undertake a second survey of the area at a cost of approximately \$30,000.

⁵⁵ See, U.S. Small Bus. Admin., Off. of Advoc., Comment Letter on Removal of National Environmental Policy Act Implementing Regulations, (Mar. 27, 2025), <https://advocacy.sba.gov/2025/03/27/advocacy-calls-for-consistency-amongst-agencies-as-ceq-withdraws-nepa-regulations/>.

⁵⁶ See Press Release, Small Bus. & Entrepreneurship Council, Press Release, *Small Business Group Applauds NEPA Modernization Rule* (July 15, 2020), <https://sbecouncil.org/2020/07/15/small-business-group-applauds-nepa-modernization-rule/> (“Reducing NEPA delays, red tape, and costs will allow our economy to more quickly reap the benefits of modern infrastructure, which will save time and money for individuals and small businesses alike. The environment will also benefit through less congestion, faster routes and projects that promote energy efficiency and alternatives.”).

⁵⁷ Pub. L. No. 118-5, tit. III, 137 Stat. 38.

⁵⁸ 42 U.S.C. §4336a(g)(1).

⁵⁹ Council on Env’t Quality, *Environmental Impact Statement Timelines (2010-2024)*, 3 (Jan. 13, 2025), https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timeline_Report_2025-1-13.pdf.

⁶⁰ The Breakthrough Inst., *Understanding NEPA Litigation, A Systematic Review of Recent NEPA-Related Appellate Court Cases*, 3 (July 11, 2024), <https://thebreakthrough.org/issues/energy/understanding-nepa-litigation>.

Small Business Recommendation: As the DOI updates its NEPA implementing procedures in accordance with CEQ's guidance, DOI should consider the following reforms that small entities have suggested to Advocacy for consideration:

- Specific time limits for permit applications.
- Posted instructions for permit applications on DOI agency websites. These instructions should include what documentation must accompany a permit application.
- Use of electronic delivery for NEPA submissions. Also, applicants should be allowed to track the progress of their permits and reviews.

Advocacy also urges the DOI to consider that many small businesses work on projects with multiple federal agencies. To reduce confusion, consistency should be maintained among agencies in their NEPA implementation procedures. This will avoid forcing small entities to learn and comply with multiple, different NEPA obligations. Adopting these changes will help transform NEPA into a more consistent, predictable, and manageable process for small businesses.

IV. Conclusion

Advocacy commends the DOI for conducting this regulatory reform review. Advocacy is prepared to collaborate with small entities from across the country to help the DOI and its subagencies achieve lasting and impactful results from this initiative. Advocacy will continue the important work of engaging with small businesses, small nonprofits, and small governmental jurisdictions to help them understand the DOI regulations, facilitate the sharing of their feedback, and relay their concerns to the DOI. As the DOI considers potential regulations for revision and rescission, Advocacy encourages the DOI and its operating agencies to work with us early and throughout the process. Advocacy also encourages the DOI to thoroughly consider all the potential impacts that its actions will have on small entities, as required under the Regulatory Flexibility Act.

Please feel free to contact me or Shanerika Flemings at (202) 205-6111 or shanerika.flemings@sba.gov if you have any questions or require additional information.

Sincerely,

/s/

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/s/

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Copy to: Mr. Jeffery B. Clark, Sr., Acting Administrator
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