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**Kate Miller**  
*Director of Government Affairs*

September 24, 2018

Public Comments Processing  
Attn: FWS-HQ-ES-2018-0007  
U.S. Fish and Wildlife Service  
MS: BPHC, 5275 Leesburg Pike  
Falls Church, VA 22041-3803

*Submitted electronically at: [regulations.gov](http://regulations.gov)*

**Re: Proposed Rule Revising Implementing Regulations for ESA Section 4d and Section 9 re: Protective Regulations; (FWS-HQ-ES-2018-0007).**

Dear Secretary Zinke:

On behalf of Trout Unlimited (TU) and our more than 300,000 members and supporters across the country, we offer the following comments on Proposed Rule Revising Implementing Regulations for ESA Section 4d and Section 9 re: Protective Regulations; (FWS-HQ-ES-2018-0007). TU's mission is to conserve, protect and restore North America's coldwater fisheries and their watersheds. The ESA is and has been a critical tool in protecting and supporting the recovery of numerous populations of fish and wildlife, including populations of trout and salmon that are so important to our members.

This proposed rule would rescind regulations that automatically extend a blanket "take" prohibition to threatened species, leaving such protections in place for "endangered" species only. We oppose this proposal and offer the following specific comments.

**Background:**

In 1975, USFWS adopted a blanket 4(d) rule (Blanket Rule) that extends ESA's take prohibition to all threatened species unless a 4(d) rule is adopted that authorizes take. In contrast, NMFS determines whether to apply ESA's take prohibition (and any exceptions) on a species by species basis when listing a species as threatened.

**Comments:**

*Blanket 4d Rule:* The proposal would remove USFWS's blanket "take" prohibition from threatened species, leaving such protections in place for endangered species only. The revision would apply only to species listed after the effective date of the proposed regulation; not retroactively to

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**A mission to conserve, protect, & restore North America's coldwater fisheries and their watersheds.**

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species currently listed as threatened, and the Service would retain authority to apply the take prohibition to endangered species through promulgation of a species-specific rule, similar to the approach utilized by NMFS. USFWS notes that the proposal is intended to align its practice with that of NMFS. Effectuating a consistent approach across agencies is an understandable goal yet it fails to account for the differences between the two agencies in terms of management responsibilities.

The USFWS manages over 5 times the number of threatened species as NMFS and is currently struggling to timely process listing petitions let alone species-specific regulations (which they are undertaking already in some circumstances). Allowing the Service to retain the safety-net protections of the blanket 4d rule while they do the work of developing the species-specific regulations allows the Service to ensure a solid baseline of protections for a threatened species and work from there to reduce or modify protections as appropriate based on a species-specific review. It also ensures that species will be sufficiently protected if the Service, due to time or budget constraints, is unable to timely effectuate species-specific regulations. Removing the blanket 4d protections for endangered species would increase the risk of species sliding from endangered to threatened status, which would further limit management flexibility. The blanket 4d approach currently in practice by the USFWS is a to endangered species helps to ensure It is a logical and pragmatic approach to meeting the objectives of the ESA and one that NMFS should consider adopting also if agency alignment is a goal.

*Species-specific Rules:* The USFWS specifically requests feedback on its stated intention of finalizing species-specific rules concurrent with final listing rules, including whether a binding requirement to do so should be included in regulation, such as setting a timeframe for finalizing species-specific rules after a final listing or reclassification determination. Completing species-specific rules concurrent with final listing rules is a laudable goal, however we do not support adding regulations to mandate or require specific timeframes for such action. As stated above, we think that species-specific rules are the most effective approach to protecting and recovering species, allowing for site-specific and species-specific considerations and flexibility. However, as also noted previously, completing species-specific rules takes **time and money**.

Allowing the blanket protections to remain in place until adequate resources are available to support meaningful engagement, evaluation and development of a species-specific 4d rule is a pragmatic approach to balancing the precautionary principle of the ESA with the reality of resource constraints within the agencies. Mandating species-specific rules be completed within a particular timeframe would only further burden an already overwhelmed program, resulting in even greater delays in listing of the many species awaiting protection, including both threatened and endangered species, ultimately placing hundreds of species at greater risk of extinction. A better approach is to maintain the current approach of extending the blanket 4d rule and allowing revisions when time and funding allow.

**Summary:**

We urge you to reject the amendments to 50 CFR Part 17 outlined in this proposed rule and to maintain the current approach to applying blanket 4d protections to endangered species. Thank you for considering our comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kate Miller".

Kate Miller  
Director of Government Affairs  
Trout Unlimited