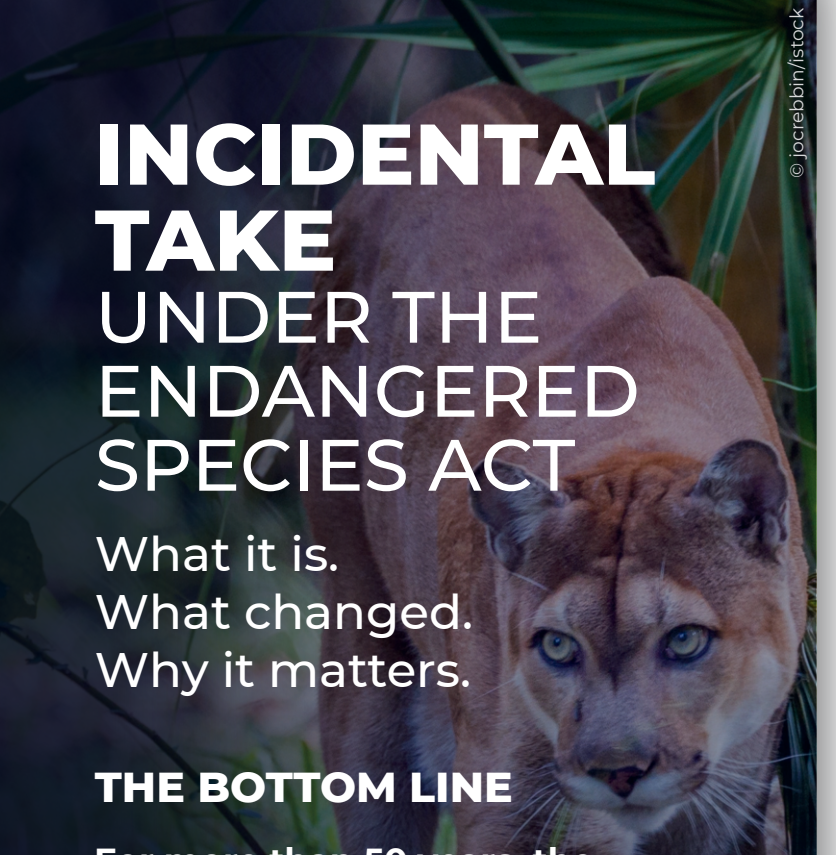

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INCIDENTAL TAKE UNDER THE ENDANGERED SPECIES ACT

What it is.
What changed.
Why it matters.

THE BOTTOM LINE

For more than 50 years, the Endangered Species Act (ESA) has recognized a basic reality: Wildlife can be killed or injured *even when no one sets out to hurt them.*

The ESA has long addressed this "incidental take" by allowing otherwise lawful activities to proceed while requiring impacts to protected species to be minimized and mitigated.

The Trump administration has adopted an extremely narrow interpretation of "take" that eviscerates this longstanding framework.

If an activity is expected to injure or kill endangered wildlife, that should be *accounted* for—not ignored.

WHAT IS INCIDENTAL TAKE?

Section 9 of the ESA prohibits the unauthorized "take" of endangered wildlife species and, in certain circumstances, threatened wildlife species. **Congress broadly defined "take" to include actions that "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect" protected wildlife.** *16 U.S.C. §§ 1532(19), 1538(a)(1).*

When "take" results from—but is not the purpose of—an otherwise lawful activity, it is known as *incidental* take. **Incidental take can occur directly or indirectly.**

INCIDENTAL TAKE EXAMPLES

	Kill/injure wildlife (direct)	Loss of habitat (indirect)
Timber Harvest	Kills/injures nesting birds	Destroys nesting trees
Dams	Kills/injures migrating salmon	Destroys and fragments salmon spawning habitat
Road Building	Causes more lethal panther-car collisions	Fragments Florida panther habitat

HOW DOES THE ESA ADDRESS THIS RISK?

SECTION 7 | FEDERAL ACTIONS

Federal agencies consult with the U.S. Fish and Wildlife Service or National Marine Fisheries Service when actions they authorize, fund or carry out may affect listed species or critical habitat. As part of this process, incidental take statements can set limits on, and require measures to minimize impacts of, incidental take.

SECTION 10 | NON-FEDERAL ACTIONS

The Services can authorize incidental take through permits that require conservation plans that identify expected impacts and include measures to minimize and mitigate them.

These provisions don't require every project affecting wildlife to stop. Rather, they require foreseeable impacts to be *confronted* rather than ignored.

WHAT HAS THIS MEANT FOR WILDLIFE?

For decades, this framework has helped:

- **Secure habitat, corridors and crossings** for Florida panthers.
- **Protect nesting and roosting habitat** for imperiled birds and bats.
- **Address oil and gas impacts** on polar bears and dam impacts on salmon.
- **Reduce impacts from off-road vehicles and pesticides** on protected wildlife.
- **Support measures to reduce deadly vessel strikes** involving Florida manatees and North Atlantic right whales.

WHAT IS CHANGING?

In 2026, the Trump administration announced that it now interprets "take" as applying only to affirmative acts *intentionally* directed at particular animals.

As a result, it rescinded longstanding regulatory definitions of "harm" that included significant habitat modification or degradation that actually kills or injures wildlife. But the problem is even larger.

Under this absurdly narrow interpretation, many foreseeable but **unintended deaths or injuries to protected wildlife will no longer be treated as prohibited take.**

Now, the ESA's legal mechanisms historically used to minimize and mitigate both direct and indirect incidental take through relevant permits and statements will no longer apply in the same way.

The administration has not made death or injury to wildlife disappear. It has attempted to make the legal obligation to address that harm disappear.

This is not simply a dispute over the meaning of one word.

For decades, the ESA's approach has been practical:

IDENTIFY THE IMPACTS.
LIMIT & MINIMIZE THOSE IMPACTS.
MITIGATE WHAT CANNOT BE AVOIDED.

Narrowing "take" to intentional acts directed at individual animals upends that framework. **Intent does not determine impact.**

At stake is whether industries, developers and government agencies must continue to account for foreseeable impacts their activities cause to species already at risk of extinction.

An endangered animal is no less dead because its death was predictable rather than purposeful.