

ENDANGERED SPECIES ACT “HARM” RESCISSION

What It Means for Land Development and Infrastructure in Central Texas, North Texas, and the Gulf Coast
July 2026

FWS and NMFS have issued a final rule rescinding the ESA definition of “harm,” effective September 14, 2026. It narrows wildlife take exposure tied to habitat modification but changes little for listed plants. Across our Texas footprint, the practical effect turns on two questions: whether a species’ ESA exposure was habitat-based, and whether the project carries a federal nexus. The three species below map the split.



Golden-Cheeked Warbler
Central Texas



Texas Prairie Dawn-Flower
Gulf Coast



Texas Fawnsfoot
North / Central Texas

WHAT THE RULE CHANGES



“Harm” previously included habitat modification resulting in death or injury to a listed species. With that definition rescinded, habitat-only impacts, absent actual injury or death to a listed animal, are less likely to be prohibited take. The change is prospective and does not affect existing permits. Direct take, meaning killing or injuring animals or destroying active nests, and the separate “harass” prohibition both remain in force.

THE BIGGEST SHIFT: UPLAND HABITAT CLEARING ON PRIVATE LAND



The greatest relief applies to private-land habitat clearing with no federal nexus. In Central Texas, this reduces ESA exposure for golden-cheeked warbler habitat cleared outside the nesting season and may lessen reliance on Section 10 permits and HCPs. Similar considerations apply to karst invertebrates. Direct take during the nesting season remains prohibited, so timing still matters.

Next: **WGA** can re-screen Central Texas clearing projects to separate non-nexus exposure, where relief is real, from federal-nexus exposure, where it is not.

WHERE IT CHANGES LITTLE: FEDERAL-NEXUS, IN-STREAM, AND COASTAL WORK



Projects with a federal nexus (Section 404 permits, federal funding, or federal land) still require Section 7 consultation. This includes many stream crossings affecting Central Texas mussels and Gulf Coast projects near whooping cranes, piping plovers, and coastal wetlands. Relief is limited, and direct take remains prohibited.

Next: **WGA** can hold Section 7 and Section 404 scope on stream crossings and coastal projects, where the rescission does not remove the consultation obligation.

PLANTS: UNAFFECTED EVERYWHERE



ESA take never applied to plants, so the rescission changes nothing for them. Texas prairie dawn-flower around Houston, bracted twistflower in Central Texas, and similar listed plants stay in scope wherever a federal nexus or state law applies. There is no incidental take permit pathway for plants, so avoidance remains the tool.

Note on Litigation: A challenge to the rescission is certain, and related ESA rules remain in flux. Effective dates and pending cases are moving targets; re-verify before any project decision.

RECOMMENDED ACTIONS

Action	Rationale
Re-screen upland habitat-clearing projects for federal nexus	Relief applies mainly to non-nexus private-land clearing
Hold Section 7 and 404 scope on stream and coastal work	Federal nexus still triggers consultation regardless of take standard
Keep nesting-season protections on occupied habitat	Direct take and harass remain prohibited
Maintain botanical survey scope	Listed plants are unaffected by the rescission
Expect litigation	A challenge is virtually certain; avoid irreversible decisions

HOW WGA CAN HELP

Please reach out with questions or to talk through how this applies to specific projects. WGA supports clients across Central Texas, North Texas, and the Gulf Coast with ESA screening and Section 7 consultation, habitat and botanical surveys, wetland delineation and Section 404 permitting, and agency coordination.



CONTACT US

Brady O'Neal

Practice Leader, Environmental

boneal@wga-llc.com | 713.789.1900