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California Land Use & Development Law Report

Fish and Wildlife Service Adopts New Regulation for Critical Habitat Exclusions

The U.S. Fish & Wildlife Service [adopted a final regulation](#) on December 18, 2020, to establish a process and the criteria for excluding areas from critical habitat designations under the Endangered Species Act. The FWS adopted the new rule to provide clarity on the exclusion process in light of agency experience and current practices, and to respond to the U.S. Supreme Court's decision in *Weyerhaeuser Co. v. U.S. Fish & Wildlife Service*, 139 S. Ct. 361 (2018), which ruled that decisions not to grant an exclusion—like decisions to grant an exclusion—are subject to judicial review. The rule applies prospectively and only to critical habitat designations by the FWS; designations by the National Marine Fisheries Service will continue to rely on existing rules and policies. Our full analysis of the new regulation is available [here](#).

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