NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

BABBITT, SECRETARY OF INTERIOR, ET AL. *v.* SWEET HOME CHAPTER OF COMMUNITIES FOR A GREAT OREGON ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 94–859. Argued April 17, 1995—Decided June 29, 1995

As relevant here, the Endangered Species Act of 1973 (ESA or Act) makes it unlawful for any person to “take” endangered or threatened species, §9(a)(1)(B), and defines ``take'' to mean to ``harass, harm, pursue,'' ``wound,'' or ``kill,'' §3(19). In 50 CFR §17.3, petitioner Secretary of the Interior further defines ``harm'' to include “significant habitat modification or degradation where it actually kills or injures wildlife.” Respondents, persons and entities dependent on the forest products industries and others, challenged this regulation on its face, claiming that Congress did not intend the word ``take'' to include habitat modification. The District Court granted petitioners summary judgment, but the Court of Appeals ultimately reversed. Invoking the *noscitur a sociis* canon of statutory construction, which holds that a word is known by the company it keeps, the court concluded that ``harm,'' like the other words in the definition of ``take,'' should be read as applying only to the perpetrator's direct application of force against the animal taken.

Held: The Secretary reasonably construed Congress' intent when he defined ``harm'' to include habitat modification. Pp. 7–21.

(a) The Act provides three reasons for preferring the Secretary's interpretation. First, the ordinary meaning of “harm” naturally encompasses habitat modification that results in actual injury or death to members of an endangered or threatened species. Unless ``harm'' encompasses indirect as well as direct injuries, the word has no meaning that does not duplicate that of other words that §3 uses to define ``take.''

Second, the ESA's broad purpose of providing comprehensive protection for endangered and threatened species supports the reasonableness of the Secretary's definition. Respondents advance strong arguments that activities causing minimal or unforseeable harm will not violate the Act as construed in the regulation, but their facial challenge would require that the Secretary's understanding of harm be invalidated in every circumstance. Third, the fact that Congress in 1982 authorized the Secretary to issue permits for takings that §9(a)(1)(B) would otherwise prohibit, ``if such taking is incidental to, and not for the purpose of, the carrying out of an otherwise lawful activity,'' §10(a)(1)(B), strongly suggests that Congress understood §9 to prohibit indirect as well as deliberate takings. No one could seriously request an ``incidental'' take permit to avert §9 liability for direct, deliberate action against a member of an endangered or threatened species. Pp. 7–13.

(b) The Court of Appeals made three errors in finding that ``harm'' must refer to a direct application of force because the words around it do. First, the court's premise was flawed. Several of the words accompanying ``harm'' in §3's definition of ``take'' refer to actions or effects that do not require direct applications of force. Second, to the extent that it read an intent or purpose requirement into the definition of ``take,'' it ignored §9's express provision that a ``knowing'' action is enough to violate the Act. Third, the court employed *noscitur a sociis* to give ``harm'' essentially the same function as other words in the definition, thereby denying it independent meaning. Pp. 13–14.

(c) The Act's inclusion of land acquisition authority, §5, and a directive to federal agencies to avoid destruction or adverse modification of critical habitat, §7, does not alter the conclusion reached in this case. Respondents' argument that the Government lacks any incentive to purchase land under §5 when it can simply prohibit takings under §9 ignores the practical considerations that purchasing habitat lands may be less expensive than pursuing criminal or civil penalties and that §5 allows for protection of habitat before any endangered animal has been harmed, whereas §9 cannot be enforced until a killing or injury has occurred. Section 7's directive applies only to the Federal Government, whereas §9 applies to ``any person.'' Pp. 14–15.

(d) The conclusion reached here gains further support from the statute's legislative history. Pp. 16–20.

17 F. 3d 1463, reversed.

STEVENS, J., delivered the opinion of the Court, in which O'CONNOR, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. O'CONNOR, J., filed a concurring opinion. SCALIA, J., filed a dissenting opinion, in which REHNQUIST, C. J., and THOMAS, J., joined.