

**Citizens' Guide
to the
ENDANGERED SPECIES ACT**



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Note: The Citizens' Guide to the Endangered Species Act is not intended as a comprehensive legal resource for lawyers. For the full text of the act, visit <http://endangered.fws.gov/esa.html#Lnk04>.

Citizens' Guide
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“Nothing is more priceless and more worthy of preservation than the rich array of animal life with which our country has been blessed. It is a many-faceted treasure, of value to scholars, scientists, and nature lovers alike, and it forms a vital part of the heritage we all share as Americans.”

*PRESIDENT RICHARD NIXON—STATEMENT UPON SIGNING THE
ENDANGERED SPECIES ACT, DECEMBER 28, 1973¹*

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Urula Kruger-Bennett

Hawksbill sea turtle

INTRODUCTION

CHAPTER

I

The Endangered Species Act of 1973 is one of the most popular and effective environmental laws ever enacted. It is a commitment by the American people to work together to protect and restore those species that are most at risk of extinction.

We humans have always been a part of nature. We evolved in wilderness among plants and animals that have existed for thousands of years. Unfortunately, the natural systems we depend on are at risk, and plants and animals worldwide are disappearing. In the United States alone, hundreds of plant and animal species, including the eastern elk, the passenger pigeon, and the California grizzly bear, have become extinct since the time of the first European settlements. In fact, scientists estimate that 539 species have gone extinct in the United States in the past 200 years. But the Endangered Species Act provides us with hope that we can not only slow these extinctions but also restore our native wildlife.

The ESA provides common sense and balanced solutions for government agencies, landowners, and concerned citizens to protect and restore endangered species and their habitat. It is based on three key elements—listing species as threatened or endangered, designating habitat essential for their survival and recovery, and ultimately restoring healthy populations of the species so they can be removed from the list.

The protection afforded by the ESA currently extends to over 1,250 species, and most of them have completely recovered, partly recovered, had their habitat protected, or had their populations stabilized or increased as a result. As important, millions of acres of forests, beaches, and wetlands—those species' essential habitats—have been protected from degradation and development.

The ESA works, with citizen involvement, to preserve not only large and charismatic species—grizzly bears and bald eagles—but those that are small, equally unique, and beautiful, such as southwestern willow flycatchers and small whorled pogonias. The far-sighted vision of the Endangered Species Act is that all these species will not merely survive in the sterile confines of zoos but thrive in the natural, wild environments where they evolved over millions of years.

Because it preserves plants, animals, and the ecosystems they depend on, the ESA is perhaps the most powerful and most significant environmental legislation ever passed in the United States. In some ways, it has also been the most successful, despite the fact that its potential has not even been tapped due to decades of intransigence. Despite attacks from right-wing think tanks, some members of Congress, extractive industry spokespeople, and Rush Limbaugh, more than three quarters of Americans support a strong Endangered Species Act.

The Endangered Species Act is the United States' best tool for reducing the rate of extinction. There are practical, moral, and selfish reasons why this must be done. December 28, 2003, marks the thirtieth anniversary of the Endangered Species Act. It is time to renew our commitment to this landmark conservation law as new scientific understanding of the threats to species provides even more compelling reasons to preserve the rich biodiversity that remains in the United States.

The Importance of Biological Diversity

“The human impact, from prehistory to the present time and projected into the next several decades, threatens to be the greatest extinction spasm since the end of the Mesozoic era 65 million years ago.”

E.O. WILSON & STEPHEN KELLERT²

Biological diversity, or biodiversity, refers to the wide range of living organisms on the planet. Humans are a part of this web of life and dependent on this natural biological wealth for their survival.

The extinction of species is part of the cycle of nature. Mass extinctions have been caused by meteors and by ice ages.

Thousands of species have disappeared because they failed to adapt to changing weather, to evolve swiftly enough to compete with other species, and so forth.

Humans have caused or hastened extinctions—through habitat destruction, overhunting, and the introduction of non-native creatures—for at least 20,000 years.

But things are different now. Humans have eclipsed all other influences and are causing extinctions at a catastrophic and utterly unprecedented pace, variously estimated by researchers at between a thousand and ten thousand times the natural rate. Many species—no one knows how many—are being extinguished even before they are discovered.

**CASE STUDY****Bald eagle**

When the American bald eagle was chosen as the national symbol for the United States in the 1780s, the bird was abundant throughout the country. Eagles suffered from aggressive hunting and habitat loss in the Lower-48 as settlers and loggers cut down the mature forests and tall nesting trees upon which the eagle depends. In the 1940s, bald eagles encountered a new threat from the use of pesticides, in particular DDT. This chemical caused bald eagles and many other birds of prey to lay eggs with fragile, breakable shells, and, as a result, populations plummeted.

Because of public outcry over the dangers of pesticides to wildlife populations documented by Rachel Carson in her book *Silent Spring*, the Environmental Protection Agency banned the use of DDT in the United States in 1972. The plight of this national symbol helped spur Congress to pass the Endangered Species Act in 1973.

Although still fairly rare outside Alaska, bald eagles have shown encouraging signs of recovery—thanks largely to the Endangered Species Act, which led to a vigorous captive-breeding program, curtailed the felling of nesting trees, and protected foraging areas.

Why Protect Endangered Species?

“Because of continued population pressures, deforestation, pollution, and other problems, thousands of species become extinct every year. That’s why it’s so uplifting to find a new species. They remind us of how much we still have to learn about the planet’s biodiversity and about how it all works to keep the Earth livable. Maintaining that diversity is one of the greatest challenges of the 21st century.”

DR. DAVID SUZUKI³

- 1) The health of other species reflects the general condition of our environment and can warn us of severe threats to human health. Humans are not isolated from their natural environment, and what happens to other species directly affects our own existence.
- 2) Biodiversity enriches science and medicine with direct benefits to public health. The rosy periwinkle, for example, provides the cure for Hodgkin’s disease and certain forms of leukemia, while the Pacific yew helps with the treatment of ovarian and breast cancer. The periwinkle was on the brink of extinction due to deforestation until scientists discovered its immense value; the yew was regarded as a trash tree and burned. A cure for cancer or AIDS may lie in a plant or animal waiting to be discovered.



USDA

The environment may provide cures for diseases.



National Park Service

Glacier National Park

- 3) Conserving endangered species and other wildlife can help generate tourist dollars for local economies. According to the Fish and Wildlife Service, Americans spent \$108 billion on wildlife-related recreation in 2001.⁴
- 4) The natural world provides us with innumerable services. The economic and environmental benefits of biodiversity in the United States have been estimated at approximately \$319 billion a year.⁵
- 5) Many people feel that we must protect other species because they have an intrinsic right to exist on our planet, whether or not they provide economic benefits or are beautiful to look at. This perspective has been argued eloquently by the conservative former New York Senator James Buckley, who said the act, “represents a quantum jump in man’s acknowledgment of his moral responsibility for the integrity of the natural world.”⁶



ENDANGERED SPECIES CHAMPION

Dr. Tom English, following a long and distinguished career as an environmental engineer for the federal government, is vice-moderator of Presbyterians for Restoring Creation, where he leads the church in an effort to draw attention to the need to preserve biodiversity and halt mass extinction.



Whooping crane

HISTORY OF THE ENDANGERED SPECIES ACT

CHAPTER

II

“From the most narrow possible point of view, it is in the best interest of mankind to minimize the losses of genetic variations. The reason is simple: they are potential resources. They are the keys to puzzles which we cannot solve, and may provide answers to questions which we have not yet learned to ask.”

U.S. HOUSE OF REPRESENTATIVES⁷

The history of how the Endangered Species Act came to be demonstrates the need for comprehensive protection for all species at risk of extinction. The first major federal wildlife-protection law was the Lacey Act, passed in 1900,⁸ which regulates interstate commerce in wild creatures. This was followed by the Migratory Bird Treaty Act of 1918,⁹ enacted to protect birds that migrate between the U.S. and Canada, later extended to include Mexico and other countries.

It was clear, however, that stronger and broader legislation was necessary, and in 1966 Congress passed the Endangered Species Preservation Act,¹⁰ which sanctioned the protection of “selected species” and encouraged protection of habitat and government acquisition of key lands. It was a fairly weak and mostly voluntary law, and was full of loopholes: there was no prohibition of “take,” a term we shall define shortly; that was left to the states and existing laws.

To patch some of the holes, Congress in 1969 enacted the Endangered Species Conservation Act,¹¹ which added foreign species and invertebrates to the list of those that could be protected. But there was still a need to incorporate new scientific understanding about species and strengthen the enforcement provisions of the act, so in 1973 Congress enacted and President Nixon signed the modern Endangered Species Act.¹² It incorporated the earlier laws, and allowed for the protection of distinct populations of species that were in decline in some places though numerous in others. It prohibited the taking of listed species, and added plants and insects.

While keeping the basic intent and structure of the Endangered Species Act, Congress has periodically amended or reauthorized the law. In 1978, provisions were added for a cabinet-level review committee and a requirement that critical habitat be designated when a species was listed.

Then, in 1982, concerned about the slow pace at which imperiled species were being listed by government agencies, Congress added deadlines for action on listing petitions and made those deadlines enforceable by the public through citizen suits brought under Section 11 of the act.¹³ These amendments gave citizens and conservation groups more ways to hold government accountable for implementing the law to ensure that endangered species are being listed and protected. The last significant amendments were made in 1988, dealing with monitoring, recovery, and better protection for plants.

The Endangered Species Act is comprised of common sense protections that provide balanced solutions for bringing species back from the brink of extinction.



Merlin D. Torillo,
Bat Conservation International

Mariana fruit bat

HOW THE ENDANGERED SPECIES ACT WORKS

CHAPTER

III

The ESA defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range. A threatened species is one that is likely to become endangered in the foreseeable future.¹⁴

A recent survey estimated that more than 6,500 of the United States' native species, approximately one-third, are at risk of extinction.¹⁵ Of these, 1,263 species were officially listed as threatened or endangered as of July 2003.

For the most part, the U. S. Fish and Wildlife Service (part of the Department of Interior) administers the list of threatened and endangered plants and animals. This includes mammals, birds, reptiles, amphibians, fishes, insects, plants, and other creatures. NOAA Fisheries (formerly the National Marine Fisheries Service), part of the Department of Commerce, manages threatened and endangered marine species and anadromous fishes such as salmon and steelhead.

To help conserve genetic diversity, the ESA also protects subspecies and distinct population segments of a species when found to be biologically and ecologically significant. For example, grizzly bears in the Lower-48 states are listed as threatened, while the Alaskan population of grizzlies is not.

According to the ESA, a species can be endangered or threatened by any of the following:

- the present or threatened destruction, modification, or curtailment of its habitat or range;
- over-utilization for commercial, recreational, scientific, or educational purposes;
- disease or predation;
- the inadequacy of existing regulatory mechanisms;
- other natural or man-made factors affecting its continued existence.¹⁶

Many other U.S. laws also protect wild animals and plants, including the Marine Mammal Protection Act, Migratory Bird Treaty Act, National Forest Management Act, Anadromous Fish Conservation Act, and the Lacey Act.

PRIMARY SECTIONS OF THE ESA

The focus of this guide is on the sections of the Endangered Species Act that are most relevant to citizens. A full text of the act is available through the U.S. Fish and Wildlife Service on-line at:

<http://endangered.fws.gov/esa.html#Lnk04>.



Mission blue butterfly

Andrew Sanchez, California Academy of Sciences

Section 4

Determination of Endangered Species and Threatened Species, provides for listing, critical habitat and recovery planning.

Section 6

Cooperation with the States, authorizes grants to states and landowners.

Section 7

Interagency Cooperation, requires federal agencies to avoid jeopardizing listed species or adversely modifying their habitat.

Section 9

Prohibits the “take” or killing of a listed species.

Section 10

Exceptions to the take prohibitions in Section 9.

Section 11

Penalties and Enforcement, including the citizen suit provision.

WEB REFERENCES >>

U.S. Fish and Wildlife Service: <http://www.fws.gov>

NOAA Fisheries: <http://www.nmfs.noaa.gov>

Table of Endangered Species: <http://ecos.fws.gov/tess/html/boxscore.html>

General Statistics: <http://ecos.fws.gov/servlet/TessStatReport>

Endangered Species Glossary: <http://midwest.fws.gov/endangered/glossary/index.html>

INTERNATIONAL SPECIES PROTECTION

IUCN, The World Conservation Union, documented 12,259 threatened or endangered species in the world in 2003.¹⁷

As global trade increases, the threat of overexploiting a species to the point of extinction grows more pressing. To combat the trade in rare and endangered animals, the Convention on International Trade in Endangered Species of Wild Fauna and Flora was established in 1973. This is a legally binding treaty requiring member countries to enforce a ban on the trade of species threatened with extinction, including the use of their parts in food, medicine, and other products. As of 2002, 160 countries had ratified CITES. The ESA is the tool the United States uses to implement this international agreement.



USFWS

Bengal tiger

State Endangered Species Acts

In addition to the federal Endangered Species Act, many states have passed their own endangered species laws.

State ESAs vary widely and, in some cases, their effectiveness is limited. Some only keep a list of endangered species and do not include any protection provisions. Few require critical habitat designation, recovery plans, or agency consultations.



ENDANGERED SPECIES CHAMPION

Susan Masten is a leader of the Yurok Tribe in coastal northern California. She is a champion of Native people in her community and across the nation, which has put her on the front lines of the struggles to protect and restore populations of salmon and other fisheries that her tribe and many others depend on.



USFWS

Breaching humpback whale

SECTION 4—LISTING, CRITICAL HABITAT, & RECOVERY

CHAPTER IV

The Listing Process

As outlined in Section 4 of the act, listing species as threatened or endangered under the ESA is the first critical step in species protection.¹⁸ None of the substantive protections of the law described later in this document apply until and unless a species is officially listed.

When the FWS or NOAA Fisheries suspect that a species is sliding toward extinction, they place a notice in the *Federal Register* describing the situation and the studies that led to this conclusion. Independent scientists and others—including the public—then may comment on the proposed listing. If the Fish and Wildlife Service or NOAA Fisheries determines—usually within one year—that the species does indeed deserve listing, it places another notice in the *Federal Register*. Thirty days later, the listing becomes effective.¹⁹

Unlike other parts of the Endangered Species Act, the listing of a threatened or endangered species is based solely on science, not on economics or other factors.

In rare cases, the verdict will be that listing is “warranted but precluded,”²⁰ if the Secretary of Interior or Secretary of Commerce finds there are pending proposals for other species that need to be

WEB REFERENCES >> **The Listing Process:** <http://endangered.fws.gov/listing/listing.pdf>
The Petition Process: <http://endangered.fws.gov/listing/petition.pdf>

**CASE STUDY****Chinook salmon**

In 1987, fishermen on the west coast noticed something was wrong. The number of winter-run Chinook salmon returning to spawn in the Sacramento River was dangerously low. In 1969, nearly 120,000 fish had returned to their spawning grounds, but by 1987 the number had fallen by more than 98 percent. When the government rejected a petition to list the fish under the Endangered Species Act, Mike Sherwood, an attorney for Earthjustice (then called Sierra Club Legal Defense Fund), went to court on behalf of the American Fisheries Society and others. It was the first time such a listing dispute had been lodged with a federal court.²¹

A district court judge rebuffed the plaintiffs, and Sherwood appealed.²² While the appeals court was considering the matter, a new survey found that the number of returning fish had plunged to just over 200. At this point the government relented and listed the species on an emergency basis. This was 1991. By 2002, the number of returning fish jumped to more than 9,000, thanks largely to improved water management practices in the Sacramento River—more water, at the right temperature, at the right time—put in place as a direct result of the ESA and the citizens' lawsuit.



dealt with before taking on a new listing, and if progress is being made to list qualified species. These species are placed on the list of candidate species and FWS or NOAA Fisheries must review the list once a year until a species is listed or the agency decides that a listing isn't necessary. Candidate species receive no formal protection under the ESA. However, voluntary candidate conservation programs can help protect or restore a species before it is listed.

Unfortunately, the candidate species list has become an ever more common excuse to avoid listing species and to shield species from citizen petitions. Today, there are more than 250 candidate species, including the northern sea otter, the Washington ground squirrel, and the western sage grouse. Some of these species have been on the list for more than a decade.

CANDIDATE CONSERVATION AGREEMENTS

A Candidate Conservation Agreement²³ implements conservation measures for species in danger of decline but not listed under the ESA. The government can enter into these voluntary agreements with other federal agencies, state and local agencies, tribal governments, businesses, private property owners, and conservation groups.

The participants in Candidate Conservation Agreements commit to implementing measures that protect species, such as improving or setting aside habitat. These agreements can be useful but should not be used by the government as a substitute for listing imperiled species.



ENDANGERED SPECIES CHAMPION

Zeke Grader leads the Pacific Coast Federation of Fishermen's Associations, commercial fishermen who have seen their industry dwindle drastically as populations of salmon and other fish have been devastated, mainly by onshore habitat destruction. PCFFA is now actively involved with species protection.



©Galen Rowell / Mountain Light Photography

Vermilion Cliffs Wilderness

Citizen Petitions

“Every individual matters. Every individual has a role to play. Every individual makes a difference.”

JANE GOODALL²⁴

Although it is primarily the government’s job to protect endangered species, citizens have become the key players in securing initial protection for imperiled fish, plants, and animals when the government fails to list them on its own.

Any person may petition the government to list a species as either endangered or threatened by submitting information on the biology, distribution, and threat to the species.²⁵ The FWS or NOAA Fisheries generally must respond to a listing petition within 90 days. If the agency believes the petition presents substantial information that the species may be threatened or endangered, government scientists must conduct more research and perform a status review for the species concerned. Within one year of receiving the petition, FWS or NOAA Fisheries must issue a finding on whether the listing is warranted.²⁶ If the agency does not meet these timelines, the ESA gives citizens the right to sue to enforce the timelines and ensure the species receive needed protection.

Once a species is listed, the government must review its status every five years.²⁷

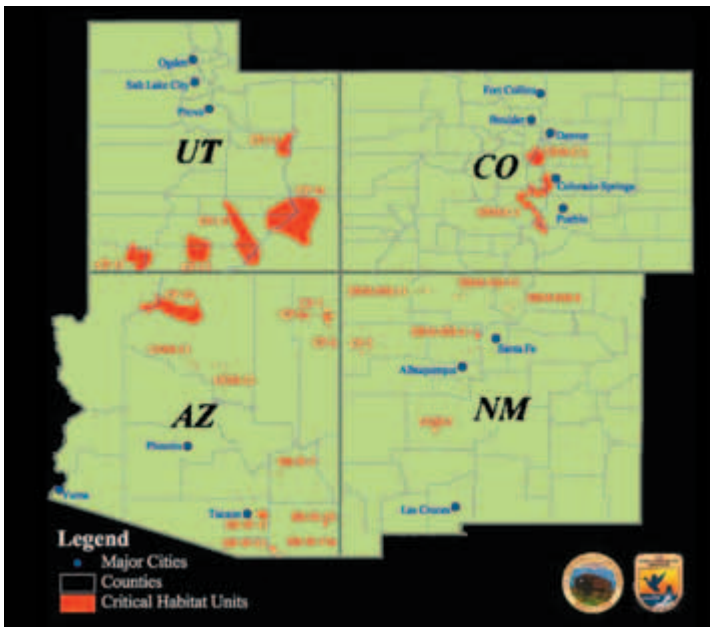
Critical Habitat

“History tells us that earlier civilizations have declined because they did not learn to live in harmony with the land. Men need to learn from nature, to keep an ear to the earth, and to replenish their spirits in frequent contacts with animals and wild land. And most important of all...recover a sense of reverence for the land.”

*STUART UDALL, SECRETARY OF INTERIOR, 1961-1969*²⁸

According to the National Academy of Sciences, for most species in decline and for most of those on the edge of extinction in the US today, the most serious threat is habitat degradation or loss.²⁹ For endangered species to survive, we must protect not just the animals and plants, but also the habitat that is necessary for their survival and recovery.

Congress recognized this fact by establishing one of the main goals of the Endangered Species Act “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.”³⁰



Critical habitat of the Mexican spotted owl

The ESA defines critical habitat as those areas with particular physical or biological features essential to a listed species that may require special management and protection if the species is to survive and recover. This sometimes includes areas not currently occupied by a species but deemed essential to the species' ultimate recovery.³¹ Without designation of critical habitat, these unoccupied areas would not receive protection against development and agencies would not have to consult about impacts to that habitat (see Section 7 consultation, page 29). As of July 2003, only 428 species of the 1,263 listed species had critical habitat designated.

Designating Critical Habitat

In identifying critical habitat for a listed species, the government is required to use the best scientific data available.³² Biologists consider the following physical and biological habitat features:

- Space for individual and population growth and for normal behavior;
- Cover and shelter;
- Food, water, air, light, minerals, or other nutritional or physiological requirements;
- Sites for breeding and rearing offspring;
- Habitats that are already protected from disturbances or are representative of the historical, geographical, and ecological distribution of a species.

The Endangered Species Act requires an economic analysis as part of the critical habitat designation process, to include both the



ENDANGERED SPECIES CHAMPIONS

Ka'ala Farm in Hawai'i is an environmental learning center that trains high school students in reforestation and other environmental restoration techniques.

positive and negative impacts of the designation. The FWS or NOAA Fisheries may exclude an area if the benefits of exclusion outweigh the benefits of designating the area, unless the exclusion would result in the extinction of the species.³³

The public can comment on the economic impacts of critical habitat through written comments and in public hearings. The government may also decline to designate critical habitat in the rare event it might have adverse impacts on a species.

After biologists in the FWS or NOAA Fisheries identify critical habitat, the agency publishes proposed boundaries in the *Federal Register*.³⁴ After receiving and considering public comments, the boundaries of the critical habitat area are finalized and protections for these lands begin. Critical habitat seeks to address the actions of federal agencies. Although private land can be designated as part of a species' critical habitat, private land is affected only if federal funds, permits, or participation is involved in an activity.



US Army Garrison Hawaii

Ko'olau forest

ECONOMIC BENEFIT OF CRITICAL HABITAT PROTECTION

Undisturbed natural areas provide significant economic benefits by helping to protect ecosystems that recharge groundwater, protect water quality, prevent erosion, promote tourism, and provide many other valuable services. For example, a recent study sponsored by the University of Hawai'i's Secretariat of Conservation Biology estimated the "net present value" of ecosystem services and other amenities provided by the forests of the Ko'olau Mountains on O'ahu alone at \$7 billion to \$14 billion.³⁵ Critical habitat is a key method for preserving such forests, and, in fact, much of the Ko'olau forestland has been either designated or proposed as critical habitat for a variety of protected species.

Recovery Plans

The goal of the Endangered Species Act is not only to prevent extinction but also to bring species back to healthy population levels. The FWS describes recovery as the “process by which the decline of an endangered or threatened species is arrested or reversed, and threats removed or reduced so that the species’ survival in the wild can be ensured.”³⁶

Recovery plans are blueprints designed to guide the government in bringing listed species to a self-sustaining level. Section 4(f) of the act requires the government to develop and implement recovery plans for threatened and endangered species unless it is found that a recovery plan would not promote the conservation of the species.³⁷

Recovery plans should include:

- a description of site-specific management plans that may be necessary to achieve conservation and survival of the species;
- a recovery objective (i.e. a target population number) and a list of criteria for indicating when the objective has been achieved;
- an implementation schedule with task priorities and cost estimates;
- a recovery plan may also call for species reintroduction, habitat acquisition, captive propagation, habitat restoration and protection, population assessments, research and technical assistance for landowners, and public education.



USDA

A group works on stream restoration.



Geranium arboreum geraniaceae / nohoanu

CASE STUDY**Hawaiian plants**

The Hawaiian Islands are home to many plant and animal species found nowhere else on earth. However, because of drastic habitat loss and invasive species, many of these species are now threatened, endangered, or extinct.

In 1989, Earthjustice, on behalf of the Conservation Council for Hawai'i, the Sierra Club, and the Hawaiian Botanical Society, sued the FWS for refusing to protect numerous species of Hawaiian plants.³⁸ As a result, nearly 200 Hawaiian plants were listed as threatened or endangered. The agency refused to designate critical habitat for the plants, so conservation groups took the FWS to court again. The court ruled that critical habitat would provide important benefits to the endangered plants, helping to promote their recovery, and ordered the agency to propose critical habitat for protected species. This process was well underway as of mid-2003.

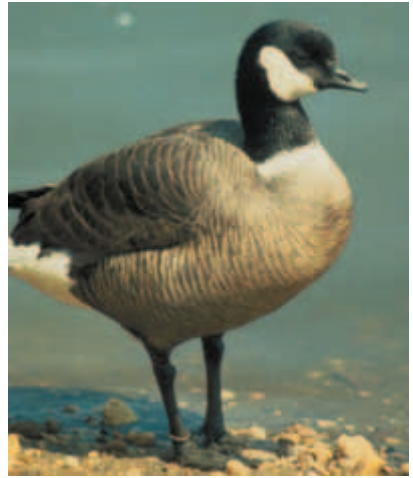
Designing Recovery Plans

FWS or NOAA Fisheries determines what species would benefit from recovery plans and appoints recovery teams representing state, federal, or tribal agencies, academic institutions, non-governmental organizations, and commercial enterprises to oversee the planning.

FWS often provides guidance for plan development. During and after the drafting process, independent peer review of the plan may be solicited and public comments gathered before the plan is finalized and implemented.

Delisting

When an endangered species has recovered and no longer needs the protection of the Endangered Species Act (or when it has become extinct), the population is “delisted” or taken off the endangered species list. Species can also be “downlisted” from endangered to threatened status.



USFWS

The Aleutian Canadian goose has made a successful recovery.

The public can petition for delisting or downlisting as with the original listing process.³⁹

To delist or downlist a species, the government must determine that a species is not threatened or endangered based on the factors outlined in the listing process. In addition, the government must also meet the goals established in the recovery planning process, such as population size, reproductive success, habitat protection, etc.



ENDANGERED SPECIES CHAMPION

Dr. Brian Miller spent a decade learning about and working to restore populations of black-footed ferrets that had nearly disappeared from the western prairies. He now works with the Denver Zoological Foundation developing strategies for keystone species such as prairie dogs and on developing the careers of young biologists.

**CASE STUDY****American alligator**

Alligators have made a dramatic comeback since the 1960s when they were on the brink of extinction. The reptiles were hunted for their skins and meat, and development destroyed much of their wetland habitat.

In March 1967, under authority of the Endangered Species Protection Act (see page 10), the Fish and Wildlife Service listed the species as threatened. The Fish and Wildlife Service and several state wildlife agencies began planning a cooperative recovery effort. As a result of measures put in place, such as protecting their habitat and prohibiting hunting and trade in skins, the alligator began to recover steadily.

In June 1987, the American alligator was pronounced fully recovered and removed from the endangered species list.

Because American alligator populations have recovered so well, hunting and egg collecting are allowed in most states. Today, alligator farming, raising alligators for commercial purposes, is a multi-million dollar industry throughout the South. Alligators are also a tourist attraction in wildlife refuges, parks, and privately owned facilities.



The dusky seaside sparrow became extinct in 1987.

RECOVERED SPECIES

American alligator
 Robbin's cinquefoil
 Columbian white tailed deer (Douglas County)
 Palau ground dove
 American peregrine falcon
 Arctic peregrine falcon
 Palau fantail flycatcher
 Aleutian Canada goose
 eastern gray kangaroo
 red kangaroo
 western gray kangaroo
 Rydberg milk-vetch
 Palau owl
 Brown pelican (Atlantic coast)
 Gray whale

The FWS or NOAA Fisheries publishes proposals to delist or downlist species in the *Federal Register*. After seeking comments from other federal agencies, states, independent scientists, and the general public, the agency decides whether to proceed. After a species is delisted, the ESA requires that the federal government monitor the health of the species for five years.

Thirty-three species have been taken off the list as of July 2003. Fifteen species, including the American alligator, the Aleutian Canada goose and the Robbins' cinquefoil have fully recovered. Seven species—the Santa Barbara song sparrow, the dusky seaside sparrow, the Tecopa pupfish, the blue pike, Sampson's pearly-mussel, the Amistad Gambusia (a fish) and the longjaw cisco (a fish)—have been taken off the list because they went extinct. The others were removed because new information was discovered or data were reevaluated.



©Galen Rowell / Mountain Light Photography

CASE STUDY

Grizzly bear

Delisting or downlisting is supposed to be based on solely scientific evidence, but occasionally these actions are politically motivated.

Once found from the Mississippi to the Pacific Ocean, grizzly bear populations in the Lower-48 states suffered heavy losses from hunting and habitat destruction. Between 1800 and 1975, the bear had been eliminated from all but two percent of its original range and the population plunged from up to 100,000 to fewer than 1,000 bears. The Lower-48 grizzly bear was listed as threatened in 1975.

The first recovery plan provided little protection for the grizzly because it failed to ensure habitat was protected from activities such as logging and road building. Represented by Earthjustice, conservation groups including the National Audubon Society sued FWS and a federal court ordered the agency to develop recovery targets that would ensure protection for the grizzly's habitat.⁴⁰

Grizzly bears still struggle to survive owing primarily to threats to their habitat. Under increased pressure from developers, western state officials and the Bush administration are pushing for delisting in the Yellowstone area despite increasing habitat threats.



Landowners are encouraged to promote a healthy environment for endangered species.

SECTION 6—WORKING WITH STATES AND LANDOWNERS

CHAPTER

V

Section 6 of the ESA allows any state to enter into an agreement with the federal government to protect threatened or endangered species and sets up grants to states to participate in endangered species programs through the Cooperative Endangered Species Conservation Fund. Programs can involve cooperative conservation projects between states and the federal government, land acquisition for recovery of species, and habitat conservation plans (more about these shortly). State conservation programs must be at least as protective of a species as the ESA.⁴¹

According to a study by the Association of Biodiversity Information and The Nature Conservancy,⁴² half of listed species have at least 80 percent of their habitat on private lands, making cooperation with individual landowners critical. In 2002, the Fish and Wildlife Service began a new grant program for voluntary private conservation measures. The Private Stewardship Program, which receives funds through the Land and Water Conservation Fund, will distribute approximately \$10 million to private landowners.



ENDANGERED SPECIES CHAMPIONS

Keeping Track, an environmental education group, teaches students at Harwood Union Middle School in Vermont to use global positioning systems and geographic information systems to monitor part of Camel's Hump State Park and a 52-acre site adjacent to and owned by the school in order to understand and protect wildlife and habitat.



Pacific Rivers Council

Clearcutting denudes hillsides and leads to erosion that damages wildlife habitat.

SECTION 7—RESPONSIBILITY OF FEDERAL AGENCIES

CHAPTER VI

“The Endangered Species Act of 1973 is not just our country’s strongest environmental law. It is also a noble vision: In it, the legislators of a great nation said—for the first time in world history—that they would do everything in their power to prevent the extinction of any species of plant or animal within our borders.”

BROCK EVANS, EXECUTIVE DIRECTOR, ENDANGERED SPECIES COALITION

Section 7 of the ESA contains several important provisions for conservation of species and the ecosystems they depend on.⁴³

Central to Section 7 is the consultation process, in which a federal agency that is funding, authorizing, or conducting an activity must work with FWS or NOAA Fisheries to ensure that the activity produces no more than minimal harm to protected species and will not adversely modify or destroy its critical habitat.

This consultation provides the opportunity for the agencies to look before they leap into carrying out possibly harmful activities. In addition to direct actions such as the construction of a building or a dam, this section covers actions such as government approval of timber sales or grazing permits.

Another key provision is the Section 7(a)(1) conservation provision, which requires that federal agencies develop and implement a program to conserve listed species in consultation with NOAA Fisheries and the Fish and Wildlife Service.

**CASE STUDY****Red-cockaded woodpecker**

Endangered red-cockaded woodpeckers depend on 80-to-100 year-old pine trees because these older trees tend to have softer wood for excavating nesting cavities. By 1985, few old pine trees in Texas were left standing as the Forest Service clearcut the trees for timber. By late 1987, only 113 woodpecker colonies existed in Texas, most of them on public land.

Earthjustice sued in 1985.⁴⁴ The district court predicted the species would be extinct in Texas by 1995 if the Forest Service did not change its logging practices and ordered the agency to eliminate clearcutting. The government appealed that decision,⁴⁵ asking the court to let the Forest Service continue managing forests with clearcuts and even-aged management—planting trees of the same age in rows.

The appeals court agreed with Earthjustice that clearcutting close to woodpecker colonies and “even-aged” management resulted in “harm to the species”. The appeals court also held that the district court could generally prohibit harmful agency actions—such as logging of old trees—but should not dictate specific management actions for listed species. The court ordered the Forest Service to complete Section 7 consultation with FWS and submit its new plan to the court for legal review. As a result of this litigation, more than a million acres of woodpecker habitat were spared from clearcutting and replaced with selective cutting.

Biological Opinions

A biological opinion is a scientific document prepared by FWS or NOAA Fisheries that assesses a project's potential impact to a protected species and recommends measures that can be taken if the project is "likely to jeopardize the continued existence" or "adversely modify critical habitat" of listed species. Public comments are not solicited for biological opinions.

In most cases, the federal agency behind a project, known as the "action agency," works with FWS or NOAA Fisheries to design project modifications or "reasonable and prudent alternatives" to avoid jeopardizing a listed species or adversely modifying a species' critical habitat. Although they consult with FWS or NOAA Fisheries, the ultimate responsibility to avoid jeopardizing a species falls on the action agency.

"Reasonable and prudent alternatives" range from activities such as moving a planned road away from an eagle nest or postponing the construction of a building until after the mating season is done to modifying the operation of hydroelectric dams that block salmon migration.

It is very rare that a project is cancelled because of the consultation process. Most jeopardy findings include reasonable and prudent alternatives that allow improved projects to go forward once modifications have been made. Between 1998 and 2001, the FWS conducted more than 219,000 informal and formal consultations and issued only 367 "jeopardy" opinions, which required modifications to reduce impacts to listed species.⁴⁶



NOAA

Sea otter

SECTION 9—THE TAKE PROHIBITION

CHAPTER

VII

“Although it is difficult to quantify the effectiveness of the act in preventing species extinction, there is no doubt that it has prevented the extinction of some species and slowed the declines of others.”

*NATIONAL RESEARCH COUNCIL*⁴⁷

Endangered species, their parts, or any products made from them may not be imported, exported, possessed, or sold. Endangered species are also protected from harm from any federal government projects, through consultations between federal agencies and the FWS.

Section 9 of the ESA generally prohibits the “take” of a species listed as endangered.⁴⁸ “Take” is defined by the act as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.”⁴⁹ Take has also been interpreted to include not only harming or harassing the species directly but also by impairing habitat that may indirectly cause death or injury by disrupting feeding, breeding, or other essential behavior patterns. For threatened species, FWS and NOAA Fisheries must adopt regulations under Section 4(d) as necessary to provide for the conservation of those species. Those regulations may include the prohibitions in Section 9.⁵⁰

In 1995, the U.S. Supreme Court revisited the issue in a decision known as Sweet Home.⁵¹ In that case, the timber industry sued the FWS challenging the service’s interpretation of “harm,” as decided by earlier cases. Specifically, the timber groups complained that the FWS’s protection of red-cockaded woodpecker and northern spotted owl habitat went against the intent of Congress. The Supreme Court disagreed. Justice Stevens, writing for the court, found that the *Palila* way of defining what “takes” or “harms” a species was correct. (See page 34.)



G. D. Carr

Clermontia oblongifolia Campanulaceae / haha

PROTECTIONS FOR PLANTS

A recent report by the World Conservation Union found that as many as 29 percent of plant species in the U.S. are at risk of extinction. Yet imperiled plants are half as likely as animals to receive listing protections under the federal Endangered Species Act.⁵²

Under Section 9 of the ESA, it is illegal to kill an endangered animal without a permit. ESA protections are different for plants than for animals. In some cases, endangered plants can be deliberately killed on private land without a permit and without mitigation. Protections on private land are particularly important to plants because many are found exclusively or predominately on non-federal lands. (See page 37 on voluntary conservation.)

Conservation groups are working for equal protection for plants, for more funding for biologists and botanists in the FWS, and to educate people about the importance of native plants.

**CASE STUDY****Palila (honeycreeper)**

The Palila is a highly endangered bird that exists only on the slopes of Mauna Kea, the highest mountain on the island of Hawai`i. The state's practice of maintaining feral goats and sheep for sport hunting on these slopes caused severe habitat destruction.

In a landmark case brought by Earthjustice in 1978 on behalf of the Sierra Club and other groups, the court maintained that the ESA's prohibition against "harming" a species included habitat destruction severe enough to adversely affect a listed species as a whole.⁵³

After the case was resolved, the Secretary of the Interior issued a new definition of harm that included habitat modification that injures wildlife by impairing essential behavioral patterns such as breeding, feeding, or sheltering.



Alex Maclean, Landfills Aerial Photography

Urban sprawl on coastal waterways of New Jersey.

SECTION 10—EXCEPTIONS TO THE TAKE PROHIBITION

CHAPTER VIII

The Endangered Species Act has flexibility built into its protections of endangered species. In 1982, Congress amended the ESA to include some exceptions to the act’s prohibition against taking listed species. Section 10(a)(2) allows FWS and NOAA Fisheries to authorize the otherwise-prohibited taking of a listed species by issuing an “incidental take permit” under certain circumstances.⁵⁴

Habitat Conservation Plans

To obtain an incidental take permit, a landowner must develop a Habitat Conservation Plan. HCPs allow development to proceed if plans specify with scientific credibility that the impacts of proposed habitat changes are minimized to the “maximum extent practicable” and that the take will not reduce the likelihood that the species will survive and recover. According to the FWS, as of April 2003, 541 HCPs had been approved, covering approximately 38 million acres and involving more than 525 endangered or threatened species.

No Surprises

In 1994, FWS and NOAA Fisheries updated Habitat Conservation Plan regulations to include a “No Surprises” policy. This change made mitigation more attractive to private landowners by guaran-

WEB REFERENCES >>

Habitat Conservation Plans:
<http://endangered.fws.gov/hcp/index.html#about>



Michael Wooten, Alabama Fish and Wildlife Research Unit

CASE STUDY

Alabama beach mouse

The highly endangered Alabama beach mouse once inhabited most of Alabama's Gulf Coast. In 1987, biologists counted only 900 mice in a 350-acre strip of the dunes. In June 1985, the FWS declared the species endangered throughout its entire range.

Refuge managers at the Bon Secour National Wildlife Refuge tried to buy neighboring land to protect the declining species, but developers refused to sell. Instead the developers obtained "Habitat Conservation Plans" from the FWS. The HCPs authorized the construction of luxury condominiums and resorts on top of the once pristine rolling white dunes. Although FWS biologists protested, stating that the concrete buildings, parking lots, tennis courts, roads, and other obstructions impacted beach mouse critical habitat, the HCPs were approved anyway.

In the first ruling of its kind in the nation on an HCP,⁵⁵ the court strongly criticized the FWS, calling the HCPs "devoid of any rational basis" and stating that the agency relied on "insufficient, inadequate and out-of-date data." The court ordered the agency to conduct a new scientific analysis and to require better mitigation from this and future HCPs. The case set a precedent for future HCPs throughout the nation.

teeing that the conditions of an HCP would not be altered over a specified period, lasting anywhere from 25 to 100 years.

The No Surprises policy is controversial because it prevents stronger measures from ever being implemented, even if biologists find that the permitted taking is having a greater impact on the species than anticipated. The legality of the No Surprises policy has been challenged in court because its ability to benefit endangered species is unproven. A hearing on all issues was held on June 13, 2003.

Safe Harbor Agreements

In 1994, the FWS and NOAA Fisheries enacted Safe Harbor Agreements that encourage voluntary arrangements between the federal government and private property owners to protect endangered species. Under the program, landowners can engage in activities that increase the population of endangered species on their property in exchange for a guarantee that they will face no additional restrictions on the future use of their property. The FWS issues an “enhancement for survival” permit (a 10 (a) (1) (A) permit) that allows the landowner to return his or her property to its original condition at the end of the agreement.

Many scientists and conservation groups believe that the Safe Harbor program needs more oversight and better scientific monitoring to prove that the voluntary conservation measures actually benefit endangered species.



ENDANGERED SPECIES CHAMPION

Marty Bergoffem is Campaign Coordinator for the Southern Appalachian Biodiversity Project, headquartered in Asheville, North Carolina. The organization is aggressive in its use of the Endangered Species Act, filing petitions and suits on behalf of the Indiana bat, freshwater mussels, green salamanders, cerulean warblers, and many other species.



John White, California Academy of Sciences

Mexican gray wolf

Experimental Populations

In some cases, the reintroduction of a species is critical for recovery. Section 10(j) of the ESA provides the government authority to designate populations of listed species as “experimental,” and thereby reduce the legal protections otherwise required by the ESA.⁵⁶

There are currently 31 experimental populations, including groups of Mexican gray wolves, black-footed ferrets, whooping cranes, and oyster mussels.

The designation of a species as experimental can be problematic as populations sometimes receive the designation when their reintroduction to a region is politically controversial. The species then receive less protection than what the ESA would typically provide.

The Endangered Species Committee

In 1978, the U.S. Supreme Court stopped the construction of the Tellico Dam on the Little Tennessee River because it jeopardized the survival of the snail darter, an endangered fish.⁵⁷ In response to this ruling, Congress created the Endangered Species Committee,⁵⁸ commonly referred to as the “God Squad,” and empowered it to exempt select projects from the ESA.

The God Squad is composed of seven cabinet-level officials with the power to set aside the ESA when:

- there are no alternatives to the agency action;
- the benefit of an exemption outweighs the benefit of protecting a species or its critical habitat;
- the action is of regional or national significance;
- and when the ESA has not been violated by an irreversible commitment of resources.

In addition, the Secretary of Defense may force the committee to exempt a project from the law “for reasons of national security.” And the President may step in during certain kinds of emergencies and take authority from the Secretary of Commerce or Secretary of Interior.

In 1979, the God Squad met for the first time to determine whether the snail darter should be protected or the Tellico Dam exempted from the ESA for economic reasons. Although the God Squad did not exempt the dam, Congress stepped in, overrode the ESA, and allowed the dam to be completed. The God Squad has met two other times: once over a dam project in Nebraska that threatened whooping cranes and again concerning the spotted owl in the Northwest (see page 42).



USFWS

Whooping crane (first species to inspire ESA)



CASE STUDY

Northern spotted owl

One notorious instance of one agency’s refusing to abide by the consultation requirement of the Endangered Species Act concerned the northern spotted owl.

The spotted owl is a shy, speckled bird whose dwindling numbers were (and still are) an indicator of the declining health of old-growth forests in the Pacific Northwest. The logging of gigantic trees in ancient forests in the region was severely fragmenting their habitat. Study after study indicated that the owl was racing toward extinction but the government refused to act. Citizen groups then filed suit and the owl was listed.

The Bureau of Land Management, however, was intent on selling big old trees to the timber companies, and it devised what it called the “Jamison Strategy,” named for its director, Cy Jamison. The strategy was aimed at reaching a goal of logging about 750 million board feet of old-growth timber from BLM lands in the Northwest. Normally, such a logging plan would trigger a consultation between BLM and FWS, but BLM argued that its “strategy” was not an “agency action” and therefore consultation was not necessary.

FWS had reviewed 174 proposed 1991 sales anyway, and determined that 52 of them—planned for western Oregon—would jeopardize the continued existence of the owl. BLM insisted that the sales go forward anyway.

Environmental groups filed suit, and the court of appeals ruled⁵⁹ that BLM must consult with FWS before the 52 sales could proceed.

Timber companies complained, arguing that the owl was a threat to Oregon's economy. The logging controversy had by this time entered the election campaign, prompting President George H.W. Bush to quip, "We'll be up to our neck in owls and every millworker will be out of a job."⁶⁰

A RUINED ECONOMY?

Environmental groups dismissed the President's charge as a great exaggeration, arguing that a plan to protect key owl habitat would not devastate local economies.

Meanwhile, under pressure from the timber industry, BLM asked for a convening of the Endangered Species Committee, requesting that the committee let 44 of the disputed sales go forward. After tense debate, the committee voted to allow 13 of the 44 sales to proceed. This was in May 1992. Before any trees were cut, however, Earthjustice attorneys learned that the White House had illegally pressured two members of the committee to approve the sales. The incriminating evidence was brought before the court and the sales were eventually withdrawn.

And what was the impact on the Northwest economy? *The New York Times*, in a story headlined "Oregon, Foiling Forecasters, Thrives As It Protects Owls," reported that Oregon posted its lowest unemployment rate in 1994, less than three years after the spotted owl decision.



The Supreme Court

SECTION 11 - CITIZEN SUIT PROVISION

CHAPTER IX

“The listing process under Section 4 is the keystone of the Endangered Species Act. The bill further amends the Act to...speed up the process by which species are added to or subtracted from the endangered and threatened species lists....It is the committee’s strong conviction that listing will be substantially improved and expedited under this new process.”

*U.S. HOUSE OF REPRESENTATIVES*⁶¹

Section 11 of the Endangered Species Act lays out the civil penalties and criminal violations for people who knowingly violate any provisions of the act. In addition, it includes the citizen suit provision, which allows any person to file a lawsuit to enforce the ESA.⁶² Concerned about the slow pace at which the federal government was listing species and the thousands of species waiting for protection on the candidate list, Congress added mandatory deadlines and the citizen suit provision in order to move the listing process forward in 1982.

According to the Endangered Species Act, “any person may commence a civil suit on his own behalf.”⁶³

Suits may be filed:

- to stop any person, including any governmental agency, who is alleged to be in violation of any provision of the act;
- to compel the Secretary of Interior to apply the prohibitions to taking an endangered species;



Christopher Christie

The peninsular bighorn sheep was listed as a result of citizen petitions.

- against the Secretary of Interior where there is an alleged failure to list endangered species or designate critical habitat.

Parties who are interested in a citizen suit must first issue a 60-day notice of intent to sue, which gives the FWS or any alleged violator time to redress the violation.

The citizen suit provision may be the most democratic section of the law, as it allows citizen participation in the protections for our country's natural resources. With it, concerned citizens, scientists, religious groups and conservation organizations can help oversee and enforce the listing of endangered species and protection of the habitat they need to survive and recover.

Citizen enforcement of the Endangered Species Act has been critical in ensuring protection for literally hundreds of threatened and endangered species. At least half of all endangered and threatened species listings have occurred as a result of citizen enforcement. For example, in California, over the last ten years, 92 percent of all endangered and threatened species listings have been the direct result of citizen enforcement.⁶⁴



ENDANGERED SPECIES CHAMPION

Daniel Patterson, once employed by the Bureau of Land Management, now works with the nonprofit Center for Biological Diversity to protect the desert tortoise, flat-tailed horned lizard, bighorn sheep, and other desert species.



Klamath Refuge

POLITICAL CHALLENGES

CHAPTER

X

Political Opposition to the ESA

“Much of the criticism directed at the Endangered Species Act is based on the belief that the act puts the interests of obscure species ahead of the interests of man. That belief is erroneous. What the act really puts foremost is the long-term interest of human welfare—and...that mankind is entitled to a habitable environment.”

*REPRESENTATIVE JOHN DINGELL*⁶⁵

The Endangered Species Act has been successful in protecting many of our nation’s species and stopping their slide to extinction. Because the ESA is effective, extractive industries and their friends in Congress are constantly trying to weaken the strong protections for species and eliminate the checks and balances in the law. The most serious attempts to weaken the act have occurred during the past decade. Thanks to public outcry, they have not been successful so far. But the struggle continues.

In 1995, after Republicans took control of the House and Senate, anti-ESA groups and politicians began a campaign to dismantle the Endangered Species Act. Industry-dominated hearings were held across the country on bills designed to weaken the ESA; however, no amendments passed.

In the 1997-1998 congressional season, there was a second but less overt attempt to repeal the Endangered Species Act. Senator Dirk Kempthorne (R-ID) introduced a bill that would have made future

listings much more difficult and given federal agencies the ability to exempt themselves from the law. This passed in committee but did not reach the Senate floor.

After full scale repeal faltered, there have been several other individual attempts to exempt species one-by-one from ESA protection through “riders,” unrelated amendments to funding bills. Fortunately, most of these attempts have been turned back or had their worst provisions removed.

Under the George W. Bush administration, anti-environmentalists in Congress and the administration continue to attack the ESA from many angles, trying to chip away at critical protections for our nation’s endangered species. Efforts have included weakening the act’s implementing regulations, failing to defend against industry lawsuits, not enforcing the law, and limiting money for listing and critical habitat designations.

In 2001, the budget for the Interior Department included a provision to forbid citizens from filing lawsuits to enforce mandatory listing and critical habitat deadlines in the ESA. Dubbed the “Extinction Rider,” it would have drastically restricted



Victor Stockman

In Appalachia, mountains are decapitated to get at coal and the mountaintops are dumped into streams.

the ability of citizens to have endangered species protected under the ESA. The provision was removed from the bill after conservation groups, scientific associations, and scientists such as Dr. Jane Goodall protested.

In one of the most serious attacks on endangered species protection, the Pentagon is aggressively pushing to exempt the Department of Defense from our nation's environmental and public health laws, including the Endangered Species Act. Despite the opposition of most Americans to exempting any federal agency from our nation's environmental laws, these unnecessary exemptions were approved by Congress in November 2003.

In addition, elected representatives, led by Representative Richard Pombo (R-CA), Chair of the House Resources Committee, and Senator James Inhofe (R-OK), Chair of the Senate Environment and Public Works Committee, are moving rapidly in Congress to advance a series of bills that would gut key provisions of the ESA.

As of July 2003, ten bills introduced into Congress threatened to roll back key provisions of the ESA. Several bills attempt to exempt all military lands, federal agencies, or private property from provisions of the act. Others are "takings" legislation, which propose to pay property owners to follow the law even though no court has found Endangered Species Act provisions to be in violation of private property rights. Other attacks have masqueraded as "sound science" and have involved putting political appointees in charge of reviewing scientific information from agency biologists and permitting developers and other economic interests to substitute their opinions for those of legitimate scientists.

Each one of these proposals has the potential to greatly weaken species protection. Taken together, their effect could be devastating to our ability to protect wildlife and habitat across the United States.

Improving the ESA

“The public will not tolerate an extreme assault to gut this law [ESA] and that is why this law has not been revised for over a decade. Our bill promotes sound science, respect for the needs of private property owners, and the ultimate recovery of species. It makes changes where the law is not working while preserving those aspects of the law that are critical.”

*REPRESENTATIVE GEORGE MILLER*⁶⁶

In order to keep the legislation current, Congress reauthorizes the Endangered Species Act every several years. In 1978 and again in 1982, Congress reviewed the legislation and added new provisions. In 1992, the ESA again came up for review, but Congress was unable to agree on what changes were needed, if any.

In 1997, members of Congress introduced the Endangered Species Recovery Act, a bill that focuses on the original intent of the ESA by strengthening recovery plans and providing greater incentives for private landowners to protect species and their habitat. In 2002, Representatives George Miller (D-CA) and Frank Pallone (D-NJ) again introduced the ESRA (HR 4579) with bipartisan support, though in the current political climate its prospects are not encouraging.

Delays in the Listing Process

In 1990, the Department of the Interior Inspector General completed an audit of the FWS's management of the ESA and found that few species were being listed as endangered and timelines were not being met. The report identified 34 species in the preceding ten years that went extinct while waiting for protection under the ESA and concluded that it would take 38 to 48 years to list all the species in need of protection if listing continues at the current rate.

In 1994, Congress passed an amendment that forbade the FWS from listing new endangered species for one year, adding significantly to the backlog. Instead of requesting adequate money to protect these species, the Fish and Wildlife Service has continued to obstruct the listing process. In November 2000, the service announced a one-year moratorium on all listing and critical habitat decisions not required under court order or by an emergency. As of early 2003, this de facto listing moratorium was still in



John White, California Academy of Science

Eastern cottontail rabbit

effect. The Bush administration has not initiated any endangered species listing or added a single species to the endangered list without pressure from citizens in the form of a lawsuit, a court order, or citizen petition.

Delays in Habitat Protection

By law, and with limited exceptions, the FWS and NOAA Fisheries must designate critical habitat at the same time species are listed. If more information is needed to identify areas essential for recovery, the agencies may take up to one extra year to designate critical habitat.

Critical habitat designation promotes recovery because it conserves both the habitat occupied by the species at the time it is listed as well as unoccupied habitat needed to support the increased numbers and range expansion that marks a species return to health. The most current status reviews by the U.S. Fish and Wildlife Service and NOAA Fisheries show that species with critical habitat are less likely to be declining and over twice as likely to be recovering as species without critical habitat.⁶⁷

Despite these mandatory deadlines, only a third of all species listed in the U.S. have critical habitat officially designated. Similar to listing, citizen enforcement through the courts has been essential to obtain habitat protection. As with listings, all critical habitat designations during the Bush administration (and many during the Clinton administration) have come via citizen pressure.

Delays in Recovery

“For species deserving protection, delaying the decision to provide protection and recovery will bring most of these vulnerable species even closer to the brink of extinction, restrict the options available for achieving recovery, and increase the eventual cost of the recovery process.”

*ECOLOGICAL SOCIETY OF AMERICA*⁶⁸

Recovery periods may depend on the health of a species' population, the gestation rate of a species, or other biological factors. The length of recovery time also depends largely on how quickly an effective recovery plan is developed and implemented. Recently, recovery plans have been delayed due to budget constraints and sometimes to political pressure.

Because the law provides no deadlines for recovery planning, recovery teams often debate and discuss the plan for years without issuing a final plan. This has resulted, according to the National Research Council, in a major backlog in recovery planning.⁶⁹ In 1995, only 54 percent of the species listed had recovery plans. The NRC goes on to say, “the backlog in recovery plans is significant because nearly everything else in the act can be seen as a preliminary measure (e.g. listing)...”⁷⁰

Funding for Endangered Species Programs

“The good Earth—we could have saved it, but we were too damn cheap and lazy.”

*KURT VONNEGUT, JR.*⁷¹

The Endangered Species Act is one of our nation's most important environmental laws—yet endangered species programs have never received sufficient funding to meet program goals. Without adequate resources, FWS and NOAA Fisheries cannot properly protect the species that are on the brink of extinction.

The Fish and Wildlife Service has stated that approximately \$153 million is necessary just to list all the plant and animal species that need protection.⁷² In 2003, the listing program received only about \$9 million, much less than is needed to relieve this backlog. Despite the fact that Congress invited the Department of Interior to submit an additional request for funding listing and critical habitat programs, as of July 2003, the department has not done so. Many other core endangered species programs, including recovery planning, consultation, and candidate conservation, have been historically under-funded and need more resources and staff in order to protect endangered and threatened species adequately.



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Sierra Nevada



West Indian manatee cow and calf

CONCLUSION

CHAPTER

XI

“With extinction there is no turning back, no second chance, no instant replay to see who should be penalized. It is final in a way that few things are final.”

TOM TURNER, EARTHJUSTICE⁷³

The federal Endangered Species Act is one of the best tools our country has to ensure that future generations will be able to enjoy the rich wildlife and biological heritage that we now cherish and benefit from in countless ways. When all elements of the act are vigorously enforced and fully funded, it works. Improvements, such as those included in the proposed Endangered Species Recovery Act, would make it even stronger and more effective. Meanwhile, funding for endangered species programs must be increased. It is equally important to maintain the right of the public—via petitions and citizen suits—to compel the government to list and protect threatened and endangered species so the extinction waiting list doesn’t continue to grow.



Joel Sartore

Stellar sea lion pup basking on beach

NOTES

XII

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- ⁶⁶ News release from Congressman George Miller, "Reps. George Miller and Frank Pallone Propose to Break Logjam Over Endangered Species Reform," Wednesday, April 24, 2002.
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