

Chapter IX. Rare and Endangered Species

HISTORY AND EVOLUTION OF THE ENDANGERED SPECIES ACT OF 1973,

including Its Relationship to CITES

Congress passed the Endangered Species Preservation Act in 1966. This law allowed listing of only native animal species as endangered and provided limited means for the protection of species so listed. The Departments of Interior, Agriculture, and Defense were to seek to protect listed species, and insofar as consistent with their primary purposes, preserve the habitats of such species. Land acquisition for protection of endangered species was also authorized. The Endangered Species Conservation Act of 1969 was passed to provide additional protection to species in danger of "worldwide extinction". Import of such species was prohibited, as was their subsequent sale within the U.S. This Act called for an international ministerial meeting to adopt a convention on the conservation of endangered species.

A 1973 conference in Washington led to the signing of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which restricted international commerce in plant and animal species believed to be actually or potentially harmed by trade.

Later that year, the Endangered Species Act of 1973 was passed, which combined and considerably strengthened the provisions of its predecessors, and broke some new ground.

Its principal provisions follow:

- U.S. and foreign species lists were combined, with uniform provisions applied to both [section 4];
- Categories of "endangered" and "threatened" were defined [section 3];
- Plants and all classes of invertebrates were eligible for protection, as they are under CITES [section 3];
- All Federal agencies were required to undertake programs for the conservation of endangered and threatened species, and were prohibited from authorizing, funding, or carrying out any action that would jeopardize a listed species or destroy or modify its "critical habitat" [section 7];
- Broad taking prohibitions were applied to all endangered animal species, which could apply to threatened animals by special regulation [section 9];
- Matching Federal funds became available for States with cooperative agreements [section 6];
- Authority was provided to acquire land for listed animals and for plants listed under CITES [section 5]; and
- U.S. implementation of CITES was provided [section 8].

Significant amendments have been enacted in 1978, 1982, and 1988, while the overall framework of the 1973 Act has remained essentially unchanged. The funding

levels in the present Act were authorized through Fiscal Year 1992. Principal amendments are listed below:

1978:

- Provisions were added to Section 7, allowing Federal agencies to undertake an action that would jeopardize listed species if the action were exempted by a cabinet-level committee convened for this purpose;
- Critical habitat was required to be designated concurrently with the listing of a species, when prudent, and economic and other impacts of designation were required to be considered in deciding on boundaries [section 4];
- The Secretaries of Interior and Agriculture (for the Forest Service) were directed to develop a program for conserving fish, wildlife and plants, including listed species, and land acquisition authority was extended to such species [section 5];
- The definition of "species" with respect to "populations" was restricted to vertebrates; otherwise, any species, subspecies or variety of plant, or species or subspecies of animal remained listable under the Act [section 3].

1982:

- Determinations of the status of species were required to be made solely on the basis of biological and trade information, without any consideration of possible economic or other effects [section 4];
- A final rule to determine the status of a species was required to follow within one year of its proposal unless withdrawn for cause [section 4];
- Provision was made for designation of experimental populations of listed species that could be subject to different treatment under section 4 , for critical habitat, and section 7 [section 10]; and
- A prohibition was inserted against removing listed plants from land under Federal jurisdiction and reducing them to possession [section 9].

1988:

- Monitoring of candidate and recovered species was required, with adoption of emergency listing when there is evidence of significant risk [section 4].
- Several amendments dealt with recovery matters: 1) recovery plans will undergo public notice and review, and affected Federal agencies must give consideration to those comments; 2) section 4(g) requires five years of monitoring of species that have recovered; and 3) biennial reports are required on the development and implementation of recovery plans and on the status of all species with plans.
- A new section 18 requires a report of all reasonably identifiable expenditures on a species-by-species basis be made on the recovery of endangered or threatened species by the States and the Federal government [see last page].
- Protection for endangered plants was extended to include destruction on Federal land and other taking when it violates State law [section 9].

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U.S. Fish & Wildlife Service

ESA Basics

Over 25 years of protecting endangered species

Introduction

When the Endangered Species Act (ESA) was passed in 1973, it represented America's concern about the decline of many wildlife species around the world. It is regarded as one of the most comprehensive wildlife conservation laws in the world. The purpose of the ESA is to conserve "the ecosystems upon which endangered and threatened species depend" and to conserve and recover listed species. Under the law, species may be listed as either "endangered" or "threatened". Endangered means a species is in danger of extinction throughout all or a significant portion of its range. Threatened means a species is likely to become endangered within the foreseeable future. All species of plants and animals, except pest insects, are eligible for listing as endangered or threatened. As of August 31, 2002, 1,818 species are listed, of which 1,260 are U.S. species. The list covers mammals, birds, reptiles, amphibians, fishes, snails, clams/mussels, crustaceans, insects, arachnids, and plants. Groups with the most listed species are (in order) plants, mammals, birds, fishes, reptiles, and clams/mussels. The law is administered by the Interior Department's U.S. Fish and Wildlife Service (FWS) and the Commerce Department's National Marine Fisheries Service. The FWS has primary responsibility for terrestrial and freshwater organisms, while the National Marine Fisheries Service's responsibilities are mainly for marine species such as salmon and whales.

Legislative History

The 1973 Endangered Species Act replaced earlier laws enacted in 1966 and 1969, which provided for a list of endangered species but gave them little meaningful protection. The 1973 law has been reauthorized seven times and amended on several occasions, most recently in 1988. The Endangered Species Act was due for reauthorization again in 1993, but legislation to reauthorize it has not yet been enacted. The Endangered Species program has continued to receive appropriations while Congress considers reauthorization, allowing conservation actions for threatened and endangered species to continue.

The ESA

The Endangered Species Act is a complex law with a great deal of built-in flexibility. Some basics of the law include:

Purpose

When Congress passed the Endangered Species Act in 1973, it recognized that many of our nation's native plants and animals were in danger of becoming extinct. They further expressed that our rich natural heritage was of "esthetic, ecological, educational, recreational, and scientific value to our Nation and its people." The purposes of the Act are to protect these endangered and threatened species and to provide a means to conserve their ecosystems.

Federal Agencies

All federal agencies are to protect species and preserve their habitats. Federal agencies must utilize their authorities to conserve listed species and make sure that their actions do not jeopardize the continued existence of listed species. The FWS and the National Marine Fisheries Service work with other agencies to plan or modify federal projects so that they will have minimal impact on listed species and their habitat.

Working with States —Section 6

The protection of species is also achieved through partnerships with the States. Section 6 of the law encourages each State to develop and maintain conservation programs for resident federally-listed threatened and endangered species. Federal financial assistance and a system of incentives are available to attract State participation. Some State laws and regulations are even more restrictive in granting exceptions or permits than the current ESA. Working with non-Federal landowners, the Service provides financial and technical assistance to landowners to implement management actions on their lands to benefit listed and nonlisted species.

Local Involvement

The protection of federally listed species on Federal lands is the first priority of the FWS, yet, many species occur partially, extensively or, in some cases, exclusively on private lands. Policies and incentives have been developed to protect private landowners' interests in their lands while encouraging them to manage their lands in ways that benefit endangered species. Much of the progress in recovery of endangered species can be attributed to public support and involvement.

Listing —Section 4

Species are listed on the basis of "the best scientific and commercial data available." Listings are made solely on the basis of the species' biological status and threats to its existence. In some instances, a species which closely resembles an endangered or threatened species is listed due to similarity of appearance. The FWS decides all listings using sound science and peer review to ensure the accuracy of the best available data.

Candidate Species —Section 4

The FWS also maintains a list of “candidate” species. These are species for which the Service has enough information to warrant proposing them for listing as endangered or threatened, but these species have not yet been proposed for listing. The FWS works with States and private partners to carry out conservation actions for candidate species to prevent their further decline and possibly eliminate the need to list them as endangered or threatened.

Recovery —Section 4

The law’s ultimate goal is to “recover” species so they no longer need protection under the Endangered Species Act. The law provides for recovery plans to be developed describing the steps needed to restore a species to health. Appropriate public and private agencies and institutions and other qualified persons assist in the development and implementation of recovery plans. Involvement of the public and interested “stakeholders” in development of recovery plans is encouraged. Recovery teams may be appointed to develop and implement recovery plans.

Consultation —Section 7

The law requires federal agencies to consult with the Fish and Wildlife Service to ensure that the actions they authorize, fund, or carry out will not jeopardize listed species. In the relatively few cases where the FWS determines the proposed action will jeopardize the species, they must issue a “biological opinion” offering “reasonable and prudent alternatives” about how the proposed action could be modified to avoid jeopardy to listed species. It is a very rare exception where projects are withdrawn or terminated because of jeopardy to a listed species.

Critical Habitat —Section 4

The law provides for designation of “critical habitat” for listed species when judged to be “prudent and determinable”. Critical habitat includes geographic areas “on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection.” Critical habitat may include areas not occupied by the species at the time of listing but that are essential to the conservation of the species. Critical habitat designations affect only federal agency actions or federally funded or permitted activities.

International Species —Section 8

The Endangered Species Act is the law that implements U.S. participation in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), a 130-nation agreement designed to prevent species from becoming endangered or extinct because of international trade. The law prohibits trade in listed species except under CITES permits.

Exemptions —Section 10

The law provides a process for exempting development projects from the restrictions of the Endangered Species Act. This process permits completion of projects that have been determined to jeopardize the survival of a listed species, if a Cabinet-level “Endangered Species Committee” decides the benefits of the project clearly outweigh the benefits of conserving a species. Since its creation in 1978, the Committee has only been convened three times to make this decision.

Habitat Conservation Plans —Section 10

This provision of the ESA is designed to relieve restrictions on private landowners who want to develop land inhabited by endangered species. Private landowners who develop and implement an approved “habitat conservation plan” providing for conservation of the species can receive an “incidental take permit” that allows their development project to go forward.

Definition of “Take” —Section 9

Section 9 of the Endangered Species Act makes it unlawful for a person to “take” a listed species. The Act says “The term take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct.” The Secretary of the Interior, through regulations, defined the term “harm” in this passage as “an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.”

Compliance with Other Laws

The Endangered Species Act is not the only law to protect species of wild mammals, birds, reptiles, amphibians and fishes, clams, snails, insects, spiders, crustaceans, and plants. There are many other laws with enforcement provisions to protect declining populations of rare species and their habitat, such as the Marine Mammal Protection Act, the Migratory Bird Treaty Act, and the Anadromous Fish Conservation Act. The Lacey Act makes it a federal crime for any person to import, export, transport, sell, receive, acquire, possess, or purchase any fish, wildlife, or plant taken, possessed transported or sold in violation of any Federal, State, foreign or Indian tribal law, treaty, or regulation.

For More Information

For additional information about threatened and endangered species and current recovery efforts, contact the U.S. Fish and Wildlife Service at the address below. Additional materials and the current U.S. List of Endangered and Threatened Wildlife and Plants is also available over the Internet at <http://endangered.fws.gov>.

**US. Fish & Wildlife Service
Endangered Species Program
4401 N. Fairfax Drive, Room 420
Arlington, VA 22203
703/358 2390**