

Sustaining Biodiversity:
The Endangered Species Act
Past and Present

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ESA History



Endangered Species Act of 1973

16 U.S.C. §§ 1531 *et seq.*

- Unanimously passed Senate
- Passed House by a 390 – 12 vote
- Signed into law by President Nixon on December 28, 1973

Endangered Species Act of 1973

Tennessee Valley Auth. v. Hill, 437 U.S. 153, 180, 184 (1978)

- “[T]he most comprehensive legislation for the preservation of endangered species ever enacted by any nation.”
- “The plain intent of Congress in enacting the statute was to halt and reverse the trend of species extinction, whatever the cost.”

Endangered Species Act of 1973

Purposes - 16 U.S.C. § 1531(b)

- "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved" "
- "to provide a program for the conservation of such . . . species. . . ."

Endangered Species Act of 1973

Policy - 16 U.S.C. § 1531(b)

- “all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of the [Act].”
- “Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species.”

ESA Structure



Listing - 16 U.S.C. § 1533 (Section 4)

- On the basis of the “best scientific and commercial data available,” and after conducting a status review of the species, the Secretary must determine whether any species is endangered or threatened.
- Two mechanisms for listing
 - (1) Secretary must identify and propose for listing those species that require listing under the five criteria
 - (2) An “interested person” can petition the Secretary to add a species to the endangered or threatened species list.

Recovery Plans - 16 U.S.C. § 1533 (Section 4)

- The Secretary shall develop and implement “Recovery Plans” for the conservation and survival of endangered and threatened species.
- In developing and implementing recovery plans, the Secretary shall incorporate in each plan:
 - (1) Site-specific management actions
 - (2) Objective, measurable criteria
 - (3) Time and cost estimates

Critical Habitat - 16 U.S.C. § 1533 (Section 4)

- The Secretary, “to the maximum extent prudent and determinable,” shall, concurrently with a listing determination, “designate any habitat of such species which is then considered to be critical habitat”
- The term “critical habitat” means, *inter alia*, the specific areas on which are found those physical or biological features:
 - (1) essential to the conservation of the species
 - (2) which may require special management considerations or protection

Prohibitions - 16 U.S.C. § 1538 (Section 9)

- “it is unlawful for any person to “take” any endangered species.
- The term “take” means to “harass, harm pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.”

Consultation - 16 U.S.C. § 1536 (Section 7)

- Each federal agency shall, in consultation with, and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency **is not likely to jeopardize the continued existence** of any endangered species or threatened species or **result in the destruction or adverse modification of [critical] habitat.**

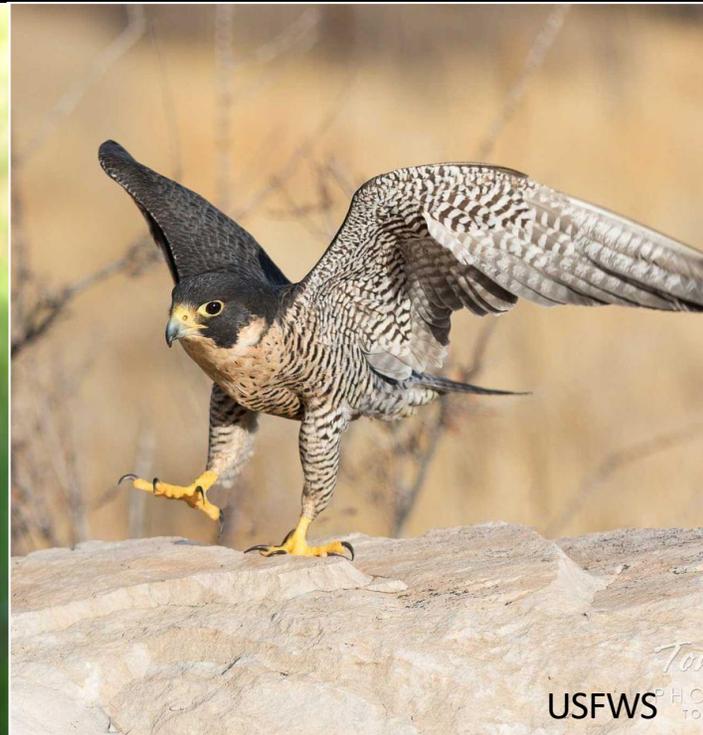
Habitat Conservation Plan - 16 U.S.C. § 1539 (Section 10)

- Secretary may permit any taking “if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.”
- Secretary must find, *inter alia*:
 - (1) the impact of such taking will be minimized/mitigated to the maximum extent practicable
 - (2) the applicant will ensure adequate funding
 - (3) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild

Enforcement- 16 U.S.C. § 1540 (Section 11)

- Violations
 - Section 9 – taking
 - Sections 4, 7, 10 – non-discretionary duties
- Enforcement
 - US Fish and Wildlife Service / National Marine Fisheries Service
 - Citizen Suits
- Civil and Criminal Penalties

ESA Successes



Protecting Plants and Animals from Extinction

- Approximately 99% of species listed have been saved from extinction
 - *See TVA v. Hill*: “The plain intent of Congress in enacting the statute was to halt and reverse the trend of species extinction, whatever the cost.”

Success Stories

- California condor
- Humboldt marten
- Black-footed Ferret

Metrics

- ~85% of bird populations have increased or stabilized while protected by the Act
- Unlisted species have much higher extinction rates

Recovery

- The term “conservation” is defined by the Act as “the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.”

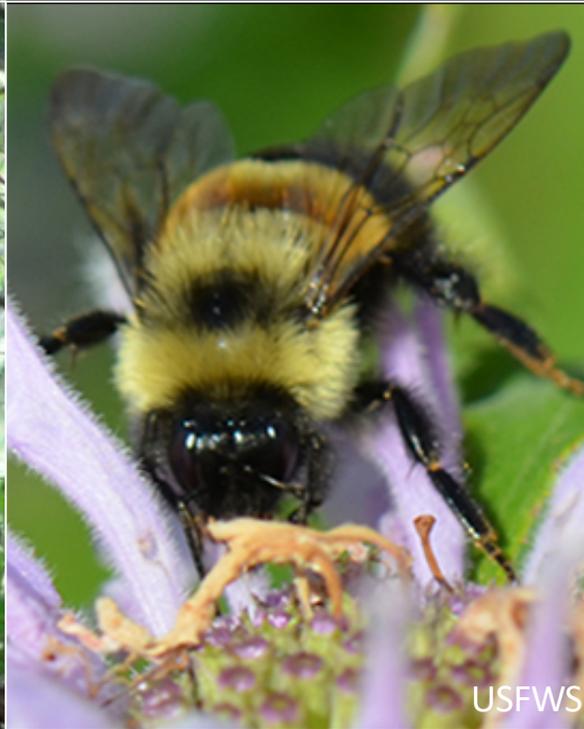
Success Stories

- Bald Eagle
- Peregrine Falcon
- Colorado butterfly plant

Metrics

- Most Recovery Plans focus on a ~50-year recovery timeline
- ~90% of species are recovering at the rate projected by their Recovery Plan

ESA Needs



USFWS

Measuring Success

- Scientists and the federal fish and wildlife agencies recognize that recovery takes significant time and resources
- Endangered species programs historically have been critically underfunded.
- Time and funding – not regulatory changes