



Endangered Species Act of 1973

In 1973, Congress passed the Endangered Species Act (ESA). The goal of the ESA is to protect and recover threatened and endangered plant and animal species native to the U.S. by (i) identifying endangered species and habitats; (ii) providing protection for those species; and (iii) recovering endangered species and their habitats. According to the U.S. Fish & Wildlife Services website, “The ultimate goal of the [ESA] is the recovery (and subsequent preservation) of endangered and threatened species and the ecosystems on which they depend.”

Responsibility for administering the ESA is held jointly by the U.S. Fish & Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS). These agencies make all decisions regarding the listing, recovery, and delisting of species under the ESA. Their actions are announced in the *Federal Register*.

Listing Species

In order to get the protection afforded by the ESA, a species must first be “listed” as threatened or endangered on the Federal List of Endangered and Threatened Wildlife and Plants. The listing process is usually completed within 27 months. Any person may submit a petition requesting that a species be listed. During a Service Review, it is determined if there is substantial information that indicates that listing *may be* warranted. If so, the species enters the Status Review phase, which includes review and information gathering. If not, the process is terminated.

Within 12 months of receiving a petition, usually during the Status Review, it must be determined whether listing *is* or *is not* warranted. If data does not support it, the finding will be that listing is not warranted; the process is terminated. If data does support it, the finding will be that listing is warranted. This finding means that either (a) the species will become a proposed listing; or (b) the proposal will be deferred.

If the species becomes a proposed listing, it enters the Peer Review phase, where the opinions of 3 species specialists will be solicited. After receiving those opinions, a 60-day comment period will begin, during which time input from the general public, the scientific community, and state & federal agencies will be heard. Finally, the final decision is made and announced. If the decision is to list the species, it will be listed 30 days later.

If, following the Status Review, the proposed listing is deferred, it is given the status of *warranted but precluded*. According to the USFWS, listing is precluded “by other listing activities” or because “other species are of higher priority”. These species are commonly referred to as candidate species. Annually, on the anniversary of submission of the petition of a candidate species, the species must be re-evaluated and determined to be warranted, warranted but precluded, or not warranted.

A 1982 Amendment to the ESA requires that determinations of the status of a species shall be made solely on the basis of scientific information, without any consideration of possible economic or other effects. However, the reality is that politics often plays a significant role in such decisions. Political opponents may attempt to weaken the effectiveness of the ESA by limiting its funding. If the money necessary to enforce the provisions of the ESA is not available, the list of species that falls under its protection cannot be expanded. If a species in Status Review is in the path of powerful special development interests or ranges over a wide area, its listing may become extremely controversial. This is often why species for which protection is warranted become candidate species instead of proposed species.

Protecting Species

The ESA protects threatened/endangered species by prohibiting the “take” of listed species. The definition for “take”, as used in the ESA, includes: harass, pursue, harm, wound, trap, capture, collect, hunt, shoot, and kill. Any action that substantially alters habitat and, in turn, results in the injury or death of a species would also be considered a take.

Additional protections were added to the ESA with the 1978 Amendment which required that, *when prudent*, critical habitat is designated concurrently with the listing of a species. “Critical habitat” is the area in which a listed species lives. The protections afforded by this amendment are limited, however, as it allows economic and other influences, in addition to biological needs, to be considered during the process of deciding upon the boundaries of the critical habitat. According to the National Wildlife Federation, fewer than half of all listed species have critical habitat designations.

Recovery

Under the ESA, the USFWS and NMFS must develop and implement recovery plans for listed species, unless “such plans would not contribute to [the species’] conservation” (ESA, Section 4). “Recovery” of a species means that its population has become self-sustaining and that protection under the ESA is no longer necessary. In general, species “recovery plans” conceive of and/or determine actions and/or procedures that will lead to a species’ recovery.

Recovery plans are drafted by a team which may consist of members from academic institutions, the government agencies (federal, state, and tribal) that will be involved with the recovery program, species-welfare organizations (e.g., the National Wildlife Federation or the Center for Biological Diversity), and commercial enterprises (e.g., logging, mining, or ranching). USFWS policy is that the implementation of recovery plans should “be accomplished through the means that will provide for timely recovery of the species while minimizing social and economic impacts”.

The content of recovery plans may vary greatly between species and may include more than one species. Plans may include:

- recovery objective(s)
- additional protective measures for the species
- re-introducing the species into former habitat
- habitat acquisition, restoration, management, or preservation
- public education
- consultation with species biologists

monitoring the species
biological research
captive breeding programs

Currently, the USFWS has a policy of “developing recovery plans within 2½ years after final listing of a species”. However, according to the National Wildlife Federation, only 79% of listed species had an approved recovery plan as of April 30, 2003.

Downlisting and Delisting

If recovery efforts for a species are successful, that species may be downlisted or delisted. When a species’ classification is down-graded from endangered to threatened, that is “downlisting”. Removing a species from the Federal List of Endangered and Threatened Wildlife and Plants is called “delisting”. Both downlisting and delisting of a species must be approved through a process similar to the listing process: assessment, Peer Review, and public input.

If a species is delisted due to recovery, a delisting monitoring plan is approved and put into action. The plan covers a minimum of five years, during which time the species is monitored and its ability to sustain itself without ESA protections is assessed. If deemed necessary, the species may be relisted or the delisting monitoring plan may be extended. Only sixteen species have been successfully recovered and delisted.

A species will also be delisted if it becomes extinct. Nine species that have been included on the Federal List of Endangered and Threatened Wildlife and Plants have become extinct and have been delisted.

“The goal of the ESA is the recovery of listed species to levels where protection under the ESA is no longer necessary”, according the USFWS. Recovery rates, however, are dependent upon many factors. Biological factors include current population levels, available habitat, and gestational rates. Availability of accurate scientific data and how quickly and effectively a recovery plan is implemented are some administrative factors. Politics continues to affect species recovery, from proposed listings that become controversial to limiting the funding necessary to adequately implement the ESA.