

Wildlife

Endangered Species Act*

16 U.S.C. §§1531-1544

Congressional statement of policy

It is the policy of Congress that all federal departments and agencies shall seek to conserve endangered and threatened species, and shall cooperate with state and local agencies to resolve water resource issues in concert with the conservation of endangered species. [ESA §2(c)]

Determination of endangered and threatened species

The Secretary of the Interior or the Secretary of Commerce, depending on their program responsibilities pursuant to the Reorganization Plan No. 4 of 1970 (the Secretary), shall determine whether any species is an endangered or threatened species because of habitat destruction, overutilization, disease or predation, the inadequacy of existing regulatory mechanisms, or other factors. [ESA §4(a)(1)]

“**Species**” refers to any subspecies of fish, wildlife, or plants, and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature. [ESA §3(16)]

“**Endangered species**” means any species that is in danger of extinction throughout all or a significant portion of its range. [ESA §3(6)]

“**Threatened species**” means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. [ESA §3(20)]

When determining that a species is endangered or threatened, the Secretary shall, to the maximum extent prudent and determinable, designate the **critical habitat** of the species. [ESA §4(a)(3)] “**Critical habitat**” means specific areas within the geographical area occupied by the species at the time it is listed, where physical or biological features exist that are essential to the conservation of the species and that may require special management considerations, and specific areas outside the geographical area occupied by the species at the time it is listed that the Secretary determines to be essential for the conservation of the species. [ESA §3(5)]

The Act establishes the procedures under which the Secretary shall designate endangered and threatened species and critical habitats, including the procedures by which the Secretary shall respond to petitions under 5 U.S.C. §553(e) (of the Administrative Procedure Act)

for the addition or removal of a species from the endangered or threatened species list. [ESA §4(b), (c)]

Whenever any species is listed as threatened, the Secretary shall issue such regulations as the Secretary deems necessary and advisable for the conservation of the species. [ESA §4(d)]

The Secretary shall develop and implement **recovery plans** for the conservation and survival of endangered and threatened species. [ESA §4(f)]

The Secretary shall implement a system, in cooperation with the states, to monitor for at least five years species that have recovered enough to have been removed from the threatened or endangered species list. [ESA §4(g)]

Land acquisition

The Secretary (or the Secretary of Agriculture, with respect to the National Forest System) shall establish a **program to conserve** fish, wildlife, and plants, and is authorized to acquire lands and waters to carry out the program. [ESA §5]

Cooperation with states

The Secretary shall cooperate to the maximum extent practicable with states, and may enter into **management agreements** with states for the administration of particular conservation areas. [ESA §6(a), (b)]

The Secretary is authorized to enter into a **cooperative agreement** with any state that establishes and maintains an **adequate and active** program for the conservation of endangered and threatened species, to assist in implementing the state program. [ESA §6(c)]

The Secretary is authorized to provide **financial assistance** to states that have entered into cooperative agreements, and shall also establish a **cooperative endangered species conservation fund** to carry out the provisions of this section. [ESA §6(d), (i)]

State laws or regulations regarding the import or export of endangered or threatened species are **void** to the extent that they permit what is prohibited by the Act or regulations promulgated under it, or prohibit what is authorized by an exemption or permit under the Act or regulations promulgated under it. [ESA §6(f)]

State laws or regulations concerning the **taking** of endangered or threatened species **may be more**, but not

less, **restrictive** than the Act or regulations promulgated under it. [ESA §6(f)]

Interagency cooperation

Each federal agency shall, in consultation with the Secretary, ensure that any action authorized, funded, or carried out by the agency is not **likely to jeopardize** the continued existence of any endangered or threatened species, or adversely modify a critical habitat. [ESA §7(a)(2)]

The Act establishes the procedures by which the effects of proposed agency actions shall be determined in consultation with the Secretary. The Secretary shall determine what conditions are necessary to minimize any adverse effects of the proposed agency action. [ESA §7(b)]

After initiation of the consultation process, the federal agency and any permit or license applicant involved shall not make any **irreversible or irretrievable commitment** of resources that would foreclose the implementation of reasonable and prudent alternatives. [ESA §7(d)]

The **Endangered Species Committee**, composed of federal agency heads and representatives from states, shall consider applications for exemptions from the requirement that federal actions not jeopardize endangered or threatened species or adversely affect their habitats. The Act establishes the circumstances under which the Committee may grant such exemptions. [ESA §7(e)-(p)]

International cooperation

The President may provide **financial assistance** to any foreign country for development and management of programs in that country for the conservation of endangered or threatened species. [ESA §8(a)]

Prohibited acts

It is unlawful to **import, export, take, or trade** any endangered species of **fish or wildlife**. [ESA §9(a)] To “take” includes harassing, harming, hunting, killing,

capturing, and collecting. [ESA §3(19)] It is also unlawful to violate any **regulation** pertaining to endangered or threatened species of fish or wildlife. [ESA §9(a)(1)(G)]

It is unlawful to **import, export, remove and reduce to possession** from an area under federal jurisdiction, **maliciously damage or destroy** in any federal area, remove or damage in any other area in knowing violation of state law, or **trade in interstate or foreign commerce**, any endangered **plant species**. It is also unlawful to violate any **regulation** pertaining to endangered or threatened plant species. [ESA §9(a)(2)]

It is unlawful to engage in any trade contrary to the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. [ESA §9(c)]

Federal actions for which the Endangered Species Committee grants exemptions do not constitute prohibited takings. [ESA §7(o)]

The Secretary may issue **permits** for otherwise prohibited actions if they are for scientific purposes or if they result in takings that are incidental to otherwise lawful activities. [ESA §10(a)(1)]

The Act establishes the circumstances under which subsistence takings, articles made from endangered or threatened species, noncommercial transshipments, and activities that would cause **undue economic hardship** if prohibited may be **exempt** from prohibition. [ESA §10(b)-(i)]

Penalties and enforcement

The Act establishes **civil and misdemeanor criminal penalties** for violations. [ESA §11(a), (b)]

The Act authorizes **searches, seizures** of wildlife and other property, and **arrests** for purposes of enforcement. [ESA §11(e)]

Any person may bring a **citizen suit** against alleged violators or the Secretary. [ESA §11(g)]