

ESA Reforms – September Update

The Trump Administration has proposed a series of changes to regulations that implement the Endangered Species Act. These recent actions are the latest in a series of proposed reforms to the Endangered Species Act, which is seeing more policy attention than it has over five years.

Proposed Regulatory Changes

Listing/delisting species as endangered or threatened:

- Require same standard for listing as for delisting a species
- Remove “without reference to possible economic or other impacts of such determination” from the requirements regarding determination of inclusion on a list
- Clarify what “foreseeable future” means in the context of a threatened species being “any species which is likely to become an endangered species within the foreseeable future.”

Designating critical habitat:

- Clarify when designation of critical habitat may not be prudent
- Reinstates the requirement to first evaluate areas currently occupied by the species before considering unoccupied areas.
- Clarify when unoccupied areas can be considered essential to the conservation of the species

The U.S. Fish and Wildlife Service is also proposing to rescind its blanket rule that automatically conveys the same protections for threatened species as for endangered species, bringing it in line with the U.S. National Marine Fisheries Service.

Reception/Prospects

- House Committee on Natural Resources thinks these are moderate, common sense reforms that have a good chance of success.
- Democratic opposition has been quieter than for other ESA reforms
- "These proposals would slam a wrecking ball into the most crucial protections for our most endangered wildlife," said Brett Hartl, government affairs director at the Center for Biological Diversity
- "...a closer look will reveal both advantages and concerns from a conservation perspective," Jake Li, director for biodiversity at the Environmental Policy Innovation Center (Sand County Foundation), said prior to the release.

Related Efforts

GOP members of the House introduced nine bills to modernize the Endangered Species Act. The LOCAL and WHOLE Acts are bipartisan – they were both cosponsored by Kurt Schrader (D-OR).

- **H.R. 6356, the LIST Act, introduced by Rep. Andy Biggs (AZ-05).** The LIST Act makes a number of improvements to help bring the ESA up-to-date. Notably, this legislation authorizes the Secretary of the Interior to de-list species when he receives objective, measurable scientific study demonstrating a species is recovered.
- **H.R. 6345, the EMPOWERS Act, introduced by Rep. Steve Pearce (NM-02).** While a pipeline under the ESA exists for States to provide input, the fact that the Act itself imposes no special requirement upon decision-makers to consult States has become, with the passage of time, a glaring omission. Such consultation requirements will ensure that no privileged or State-specific information slips through the cracks when listing decisions are made.
- **H.R. 6344, the bipartisan LOCAL Act, introduced by Rep. Scott Tipton (CO-03).** Species conservation experts and policy powerhouses alike have recommended for decades that the Endangered Species Act be amended in order to codify incentives and set clear statutory channels for recognizing such voluntary efforts. This legislation would codify several longstanding practices and regulatory language which facilitate voluntary conservation, including Species Recovery Agreements (SRAs) and Habitat Reserve Agreements (HRAs).
- **H.R. 6355, the PETITION Act, introduced by Rep. Bruce Westerman (AR-04).** The United States Fish and Wildlife Service (USFWS) is instructed by law to issue decisions on petitions within specific timeframes established in the Act. When they miss those timelines, they are vulnerable to lawsuits by petitioners. A final, crucial fact to note: Anyone can submit any number of petitions containing any amount of information – or misinformation. This bill reforms that petition process, allowing the Secretary to declare a ‘petition backlog’ when too many frivolous petitions stack up and USFWS becomes vulnerable to lawsuit.
- **H.R. 6364, the LAMP Act, introduced by Rep. Don Young (AK-At Large).** Local governments, tribes and states have been successful players in species conservation and recovery since passage of the Endangered Species Act (ESA) in 1973. Despite their strong track record, the Act itself contains a relatively weak framework for facilitating interaction amongst these players and federal species conservation-responsible agencies. The LAMP Act permits the Secretary of the Interior to enter into cooperative management agreements with states local governments, tribes and other non-federal persons in order to better manage species and improve habitat conservation.
- **H.R. 6360, the PREDICTS Act, introduced by Rep. Ralph Norman (SC-05).** Habitat Conservation Plans (HCPs) are comprehensive planning documents created collaboratively between Fish and Wildlife or National Marine Fisheries and a person, government or corporation pursuing permitting and development for a project which is likely to result in listed species takings. This simple bill aims to codify the requirements for HCPs, and similar Candidate Conservation Agreements with Assurances and Safe Harbor Agreements found in agency regulations in order to provide certainty and reward the good behavior of public and private entities that faithfully uphold their agreements in order to help recover listed species.

- **H.R. 6346, the bipartisan WHOLE Act, introduced by Rep. Mike Johnson (LA-04).** This simple bill ensures that the totality of conservation measures underway will be considered before taking federal actions that impact species.
- **H.R. 6354, the STORAGE Act, introduced by Rep. Paul Gosar (AZ-04).** This simple bill will ensure sure that confused and mistaken critical habitat listings cannot take place – for the benefit of listed species, water and power infrastructure operators as well as water and power customers.
- **H.R. 3608, the Endangered Species Transparency and Reasonableness Act, introduced by Rep. McClintock (CA-04).** H.R. 3608 requires data used by federal agencies for ESA listing decisions to be made publicly available and accessible through the Internet, allowing the American people to actually see what data is being used to make key listing decisions.

Senator Barrasso (R-WY) convened a hearing in July on his draft reform legislation.

- Elevate the role of state conservation agencies in species management
- Increase transparency associated with carrying out conservation under the Act
- Prioritize available resources for species recovery
- Provide regulatory certainty for landowners and other stakeholders to facilitate participation in conservation and recovery activities
- Require that listing of any species must also include recovery goals, habitat objectives, and other criteria established by the Secretary of Interior, in consultation with impacted states, for the delisting or downlisting of the species
- Require that the satisfaction of such criteria must be based on the best scientific and commercial data available
- Enable states the opportunity to lead recovery efforts for listed species, including through a species' recovery team