

# Achieve Greater Results from an Improved ESA Program

Species conservation is principally governed by state authority. While states have primary authority for management of fish and wildlife, the U.S. Fish and Wildlife Service and federal land management agencies have strong authorities as well. This means that state and federal agencies must work together to effectively manage fish and wildlife populations. The work includes keeping healthy populations healthy, providing and enhancing habitat, and sometimes either recovering or reducing population sizes and densities according to available habitat, balance with predator and prey species, social tolerance, and goals for public outdoor recreation, hunting, and fishing.

Two main areas of policy can ensure successful long-term species conservation. One is the *Endangered Species Act* (ESA), which is intended to prevent extinction and recover at-risk species. Another is the federal land management authorities that affect the quality of habitat on which wildlife depend.

## Help Species Before the ESA is Needed

- Issue and enforce objective, measurable, and transparent criteria for considering voluntary conservation actions that preclude the need to list species under the ESA. Interior/FWS; Commerce/NOAA
- Expand the Working Lands for Wildlife partnership between the NRCS and FWS for landowners who qualify for existing Biological Opinions. Agriculture/all bureaus; Interior/FWS
- Provide dependable funding for state-based, proactive, voluntary conservation of declining fish and wildlife species through the Farm Bill, *Recovering America's Wildlife Act*, NAWCA, and the State and Tribal Wildlife Grants program (see Recommendation 1: Funding for Conservation for more details). Congress; Agriculture/FWS; Interior/FWS; Defense/all bureaus
- Provide funding for a national coordinator to support Conservation without Conflict, engaging agencies in broad public/private collaborative approaches to conservation. Congress; Interior/FWS; Agriculture/FS; Defense/all bureaus
- Increase funding to recover listed species and improve implementation of the ESA by state and federal agencies. Interior/FWS; Commerce/NOAA; Agriculture/FS

Addressing threats to at-risk species before these species warrant listing under the ESA is the most efficient way to improve species conservation. This requires the combined authorities and resources of state, private, and federal entities working together. A growing number of solutions are emerging from people with diverse goals and values that focus on common conservation interests—a promising solution known as Conservation without Conflict. This is demonstrating to policy makers, funders, conservation groups, and the public and private sectors that collaboration delivers results for wildlife, habitat, and the values we ascribe to stewardship. Regulations will always have an important role in conservation, but regulatory action often does not promote collaboration, and can create counterproductive and adversarial tensions. Conservation without Conflict is, in essence, the idea that voluntary proactive approaches

to conservation that help species and keep working lands working can achieve far more conservation benefit than approaches that are top-down, mandated, and regulatory.

Current ESA regulation provides little support for collaboration and productive efforts struggle for funding. The FWS needs stronger authority to defer listing when these efforts are likely to produce results. Policies issued in the 1990s, such as Candidate Conservation Agreements with Assurances and Safe Harbor Agreements, attempt to do this. However, these agreements often lack specific, measurable criteria that enable FWS to acknowledge them in listing decisions. The process for approving these agreements is lengthy and costly. They must be clearer in purpose and accountability, better funded, and easier to obtain.

## Improve the ESA

- Hold hearings and actively engage in updating the ESA to focus on improving species recovery and reducing litigation. Congress
- Amend Section 4 of the ESA to create a science-based, reliable process for listing and delisting species. Congress
- Delist species when their populations have reached recovery goals. Interior/FWS; Commerce/NOAA
- Update Section 7 of the ESA to clarify that requirements for reinitiating consultation do not apply at the planning level and are triggered only by significant, peer-reviewed, published new information. Congress; Interior/FWS; Commerce/NOAA

The goal of the ESA is broadly supported, but conflicting values on how the ESA should be implemented has resulted in gridlock. Revision of the ESA has been impossible since the last viable effort in 1997. The solution is more efficient use of funds and more funding.

Listing and delisting species has been overtaken by litigation. Delisting, which returns conservation and management of a species to state authority, is supposed to occur when recovery goals are met. However, recovery goals can be shifted. Also, lawsuits prevent delisting by exploiting outdated provisions of the ESA. One such provision concerns whether the listed “entity” is an entire species or a population of a species. For example, the gray wolf occurs in populations in the Midwest, Southwest, and Rocky Mountains. Delisting in the Rockies was repeatedly prevented by the courts until Congress intervened in 2011 to reinstate a delisting decision and preclude further lawsuits. Delisting in the Midwest is still being denied. A more reliable process requires updating the ESA.

Under the ESA, the FWS must review every federal government action that may affect a listed species. As a result, this FWS consultation process is one of the longest, most litigated, and inconsistently applied aspects of the program. Recent litigation has made the problem worse. In *Cottonwood Environmental Law Center v. Krueger* (2015), the 9<sup>th</sup> Circuit Court of Appeals required federal



land management agencies to repeat consultations on plans and programs (e.g., Forest Plans) each time a new species or habitat is listed, or new information is received. Congress in 2018 enacted a five-year partial exemption and deferral from this requirement for species listing and critical habitat designation but failed to define or limit new information as a trigger for re-consultation. Further steps are necessary to ensure requirements for re-consultation are based only on verifiable, peer-reviewed scientific information and applied only when productive for conservation purposes rather than as an obstruction to decision making.



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