



## The Endangered Species Act Explained

The [Endangered Species Act](#) (ESA) was signed into law by President Richard Nixon in 1973 to protect and recover animal and plant species at risk of extinction due to habitat changes or loss of their ecosystems. The ESA makes it illegal “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct” and defines these actions as a “take.” Destruction or disturbances to habitats, as well as trade involving animal parts or products also qualifies as a take and is illegal under federal law. The primary aim of the ESA is to recover endangered and threatened species and to remove them from the Endangered Species List, though the law has often been misused as a tool to limit economic development. The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service are responsible for administering the ESA. Congress last renewed the ESA in 1988, meaning it’s been 28 years since any substantial updates or changes have been made.

[Critical habitats](#) of endangered species are also protected under the ESA. These [areas](#) contain the “physical or biological features that are essentials to the conservation of species.” Recently, the administration decided that land unoccupied by species may still be protected for future species conservation, expanding the role of critical habitat in ESA decisions. An area can also be excluded from designation if economic analysis finds that “the benefits of excluding it outweigh the benefits of including it, unless failure to designate the area as critical habitat may lead to extinction of the listed species.”

### How Are ESA Listings Made?

Section 4 of the ESA [outlines the process](#) for listing a species. Five factors decide if a species can be listed including: damage to or destruction of a species’ habitat, overutilization of the species for commercial, recreational, scientific, or educational purposes, disease or predation, inadequacy of existing protection, and other natural or manmade factors that affect the continued existence of the species. Should a species meet one or more of these factor, it is eligible for listing and protection under the ESA and a petition can be filed to have the species considered for protection.

Increasingly, litigation is also being used to force the federal government into ESA listing decisions. In 2011, for instance, a federal court approved a settlement agreement between FWS and WildEarth Guardians and the Center for Biological Diversity. Under the agreement, over 250 candidate species must be reviewed for final listing as either threatened or endangered under the ESA by 2016.

### Has the ESA Been Successful?

As of the beginning of 2016, 2,246 domestic species have been listed as endangered or threatened under the ESA, yet only [2 percent have been recovered](#). Several hundred candidate species, or species with qualifications to be listed as endangered or threatened, are also currently waiting for decisions. This poor recovery rate is in part due to the increased focused on litigation over practical and effective conservation efforts that support species recovery and protection.

Former U.S. House Committee on Natural Resources Chairman Doc Hastings (R-Wash.) and others have [also cited](#) the ESA as a litigation tool used by activists to “bring lawsuits against the government and block job-creating projects.” FWS Director Dan Ashe [stated](#) in 2011, “We fully agree with the concern that our resources are better spent on implementing the ESA than on litigation.” According to Ashe, “our [Fiscal Year] 2011 resource management allocation for listing and critical habitat was \$20.9 million, of which we spent at least \$15.8 million taking substantive actions required by court orders or settlement agreements resulting from litigation.”

In 2014, an ESA Congressional Working Group examined implementation of the ESA. The Working Group’s [Final Report](#) concluded that “the ESA, while well-intentioned from the beginning, must be updated and modernized to ensure its success where it matters most: outside of the courtroom and on-the-ground. A two percent recovery rate of endangered species is simply not acceptable.”