

Protect the Endangered Species Act

The Endangered Species Act (ESA) is our nation's most effective law for protecting wildlife and plants in danger of extinction because it is grounded in science. Since the Act's enactment in 1973, over 95% of species listed under the Act survive, and hundreds are on the path to recovery. Today, scientists estimate that extinction is happening at a rate at least [100 times greater than what is considered normal](#), and half of all species may be at risk of extinction in the next century. In just the last 40 years, we have [lost half of all wild animals on our planet](#). Human-caused habitat destruction, overexploitation of natural resources, pollution, and climate disruption are the primary drivers of the crisis. The ESA is more necessary than ever to stem this tide of extinction and the loss of wildlife all around us. The ESA is also broadly popular—a 2018 [study](#) by researchers at The Ohio State University found that roughly four out of five Americans support the law.

Funding the ESA

The ESA's success is particularly impressive given that the Act has been chronically and severely underfunded for decades. Hundreds of endangered species receive less than \$1,000 a year for their recovery, with many receiving no funding from the Service at all. Because of funding shortfalls, nearly 50 imperiled animals and plants have been declared extinct while waiting for the Act's protections. To truly save species, Congress must fully fund the ESA. This means providing enough funding for the listing program to ensure species are recognized as imperiled, for planning and consultation to ensure basic protections are applied to species, for recovery planning and work to recover species to the point where protections are no longer necessary, and for collaborative work across public and private lands to ensure we work together to protect our natural heritage. Starting in fiscal year 2020, the data show that the FWS requires a budget of \$481 million dollars across five programs to begin to make up for lost ground and put species on the path to recovery.

The Sage-Grouse Rider



The greater sage-grouse is an imperiled western bird and the charismatic ambassador for the Sagebrush Sea, an ecosystem that is vital to fish and wildlife, recreation, communities, and sustainable economic development in eleven western states. As many as 16 million greater sage-grouse once ranged across 297 million acres of sagebrush grasslands. Today, sage-grouse range is half of what it once was, and populations have declined to less than ten percent of historic numbers. In 2010, the FWS found that the greater sage-grouse warranted protection under the ESA, but other priorities precluded the agency from proposing a listing rule at that time. Recognizing the urgent need for conservation action, the Obama administration took the extraordinary step of amending nearly one hundred federal land use plans across the West with new conservation prescriptions for sage-grouse. The FWS later decided not to list the sage-grouse,

citing these plans in its decision. However, the Trump administration has revised these plans yet again to allow for more oil and gas drilling and other land uses in critical sage-grouse habitat. Since 2014, Congress has passed a rider in annual Interior appropriations bills blocking the FWS from even considering sage-grouse for protection under the ESA. In light of the recent plan revisions, it is imperative that federal agencies have all available tools to use, as necessary, to address population declines and habitat loss. Scientists at the FWS, not Congress, should be making decisions about which species need protection. The damaging rider should not be included in the FY 2020 Interior appropriations bill.

Infrastructure Affects Wildlife

As Congress moves to address our aging infrastructure, we have an unparalleled opportunity to invest in environmental safeguards and conservation innovations that will ensure American wellbeing and security and create jobs and prosperity for the citizens of today and for future generations. Modern infrastructure projects must be viewed through the lens of wildlife conservation and environmental sustainability, and should meet the following criteria: rely on sustainable or natural materials to increase infrastructure resiliency and longevity; reintroduce or preserve native flora; create resilient and sustainable water and waste management systems, particularly through implementing natural alternatives like wetlands, dune restoration, and natural vegetation



buffers; and reduce wildlife conflict using wildlife corridors and crossings. On our shared public lands, natural areas must be preserved, and efforts must be made to repair (or in some cases remove) infrastructure that poses a threat to ecosystems and public interests. Finally, Congress must reject any efforts to include waivers from fundamental environmental laws such as the ESA and the National Environmental Policy Act in any legislation that authorizes or funds infrastructure, including disaster remediation projects. We urge you to support infrastructure that invests in wildlife and oppose efforts to skirt compliance with bedrock environmental laws.

Climate Change

The protections afforded to species at risk by the ESA have never been more critical given the threats created and exacerbated by climate change. Species extinction is inextricably entwined with the impacts and acceleration of a worsening climate crisis. For instance, shrinking and thinning Arctic sea ice imperils polar bears, ocean acidification damages coral reefs, and extreme weather harms migratory bird populations. The decline of species impacts the future welfare (and even survival) of humans, given our reliance on biodiversity. Species protected under the ESA include pollinators vital for agriculture, amphibians critical to insect-borne disease prevention, and megafauna important for maintaining our lucrative outdoor recreation industry. Furthermore, protecting species and their habitats under the ESA can also help offset the effects of climate change. Designated critical habitat under the law includes areas vital for carbon sequestration, drinking water, clean air, and flood protection. We urge you to support innovative solutions to the climate crisis that defend the strength of the ESA, highlight its immense benefits, and fully fund its implementation.



Threats to the ESA

Unfortunately, over the past several Congresses there has been an increase in the number of legislative attacks on the ESA. In the 115th Congress alone, [nearly 120 bills and amendments](#) were filed that would undermine this vital law. These pieces of legislation have fallen into several categories: (1) efforts to gut portions of the Act such as citizen enforcement and the use of science; (2) efforts to block ESA protections for particular species including gray wolves, sage-grouse, and grizzly bears; and (3) efforts to block protections for species within certain geographic areas such as the Bay Delta estuary in California. Thankfully, efforts to oppose nearly all these attacks on the ESA have so far been successful. In the 116th Congress we face the continued threat of standalone bills and amendments that would undermine the Act. We urge you to support wildlife and strongly oppose all such efforts to weaken the ESA.

In addition to threats from Congress, endangered species are under unprecedented attack by the Trump administration, via regulations that would severely weaken the ESA. President Trump and Acting Secretary Bernhardt's "Extinction Plan" would weaken endangered species protections by:



- Making it more difficult to extend protections to threatened species, which could delay lifesaving action until a species' population is so small it may be challenging or impossible to save;
- Making it more difficult to protect species like polar bears that are impacted by the effects of climate change;
- Allowing economic factors to be analyzed when deciding if a species should be saved; and
- Making it easier for companies to build roads, pipelines, mines, and other industrial projects in critical habitat areas that are essential to imperiled species' survival.

We urge you to oppose these damaging ESA regulation changes.

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Trump Administration Regulations Undermine Species Conservation

On July 25, 2018, the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service published three proposed rules in the Federal Register that would drastically alter the implementation of the Endangered Species Act (ESA). Many of the proposed regulations would undermine the conservation of imperiled species, and as a result, the FWS received over 871,000 public comments in opposition. The Trump administration's proposed regulations were submitted to the Office of Budget and Management for regulatory review and could be finalized and published any day. At a time when our nation and our planet are facing an extinction crisis of epic proportion, we should be working to strengthen, not weaken our best tool for saving endangered species.

Proposed Regulations

*Proposed Revisions to Section 4 Regulations for Listing Species and Designating Critical Habitat.*¹

The Trump administration proposes numerous amendments to the ESA's Section 4 implementation regulations. First, the proposal to remove regulatory language that prohibits consideration of the possible economic impacts when listing a species as endangered or threatened is a radical departure from past practice and is not in keeping with the intent of the Act. The ESA requires listing determinations to be based "*solely* on the basis of the best scientific and commercial data available. . . ." because a species' conservation status is fundamentally a biological question.² The administration's proposal to remove the regulatory phrase "without reference to possible economic or other impacts" opens the door to burdensome and inappropriate cost-benefit analyses that risk politicizing the wholly-scientific listing process.

The administration also proposes to define the term "foreseeable future," which is not currently defined in the ESA, but extensively analyzed in an M-Opinion issued by the Solicitor of the Department of the Interior in 2009. Under the ESA, species may be listed as either "endangered" or "threatened." A threatened species is one that is "likely to become endangered within the foreseeable future."³ In the M-Opinion, the Solicitor concluded that "Congress intended the term 'foreseeable future' to describe the extent to which the [agency] can reasonably rely on predictions about the future in making determinations about the future conservation status of [] species."⁴ The proposed definition departs from the M-Opinion by requiring that the Service "reasonably determine" that the threats to the species are "probable," potentially limiting foreseeable analyses for many species, including those threatened by climate change.

The single largest driver of extinction is habitat loss, but the Trump administration is proposing new exemptions to the ESA's requirement that critical habitat be designated at the time of listing except when the designation would not be prudent.⁵ Current regulations make clear that critical habitat "shall" be designated unless it "would not be beneficial to the species."⁶ Under the proposed regulation, habitat would not be designated if the primary threat to a species derived from disease or climate change, or when designation would provide "negligible" benefits. None of these provisions will aid in the conservation of species and will likely contribute to loss of habitat that is vital to survival and recovery. This automatic exemption runs counter to the ESA and congressional intent.

¹ *Revision of the Regulations for Listing Species and Designating Critical Habitat*, 83 Fed. Reg. 35,193 (July 25, 2018).

² 16 U.S.C. § 1533(b)(1)(A) (emphasis added).

³ 16 U.S.C. § 1532 (20).

⁴ Department of the Interior, Office of the Solicitor, Opinion M-37021, *The Meaning of "Foreseeable Future" in Section 3(20) of the Endangered Species Act* (Jan. 16, 2009).

⁵ 16 U.S.C. § 1533(a)(3)(A).

⁶ 50 C.F.R. § 424.12(a)(1)(ii).

The proposal also clarifies that the ESA's five listing factors apply equally to listing and delisting decisions. While the proposal essentially restates current law, delisting decisions must necessarily consider what constitutes recovery. Species should not be delisted until threats to their survival are abated and their recovery is assured.

Lastly, this proposed regulation would restrict the designation of unoccupied habitat and reinstate a rigid "step-wise" approach to designating critical habitat—by which unoccupied areas may only be considered after the Services determine that occupied areas are insufficient to conserve the species. Instituting a presumption against designating unoccupied critical habitat places political and cost considerations above best available science. If adopted, these changes would undermine the conservation of endangered and threatened species, weaken their critical habitat protections, and make recovery of endangered animals and plants costlier and more difficult.

Proposed Revisions to Section 7 Regulations for Consultation⁷

Section 7 consultation has been described as the "heart of the ESA" because it requires federal agencies to ensure that their actions will not (1) jeopardize species' survival and recovery and (2) destroy or degrade critical habitat. The proposed changes would exempt ongoing effects of federal projects from consideration in consultation and limit Section 7 consultation to actions within the jurisdiction of the regulatory agency—leaving out actual, concrete harms directly or indirectly caused by a proposed action. The changes would also allow the Services to ignore harm caused by federal actions if those harms are manifested through "global processes," yet another attempt to eliminate the need to consider the impacts of climate change on imperiled species. The Trump administration's proposal also seeks to undermine mitigation measures to offset harmful impacts. By proposing to add language that mitigation measures require "no specific binding plans or a clear, definite commitment of resources," vague, undefined, and uncertain promises of mitigation could outweigh admitted adverse impacts.

To address habitat loss, Congress prohibited federal agencies from taking action that would result in the "destruction or adverse modification" of critical habitat. The administration's proposal would only restrict federal agency actions that "diminish[] the value of critical habitat as a whole," potentially excluding the vast majority of actions that harm critical habitat. Lastly, it would impose an arbitrary 60-day deadline on informal consultations. If implemented, this regulation would diminish the importance of the consultation process and place endangered species at substantially greater risk.

Proposed Rescission of the Blanket Section 4(d) Rule for Protection of Threatened Species⁸

The Trump Administration proposes to rescind a FWS regulation that automatically extends the protections afforded to endangered species to threatened species under Section 4(d) of the ESA. For nearly 40 years, the FWS has provided protections to threatened species as a default, unless it adopts a species-specific regulation. The proposal will increase the burden on the FWS to develop individualized rules for threatened species, straining the agency's limited budget, and making conservation of such species less efficient and effective. Unless FWS can issue special 4(d) rules for every threatened species, this rule will deprive threatened species of protections against take, potentially impairing their recovery or even pushing them further towards extinction.

⁷ *Revision of Regulations for Interagency Cooperation*, 83 Fed. Reg. 35,178 (July 25, 2018).

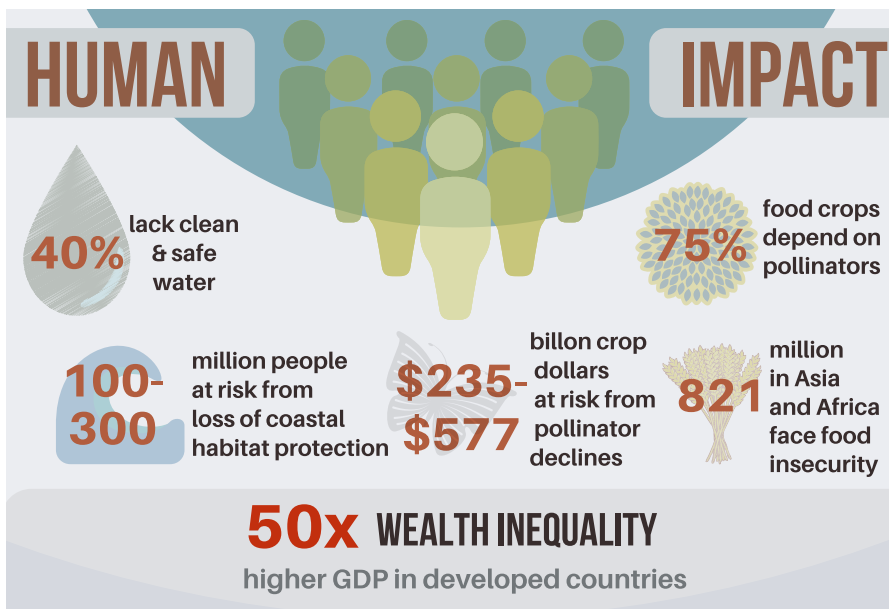
⁸ *Revision of Regulations for Prohibitions to Threatened Wildlife and Plants*, 83 Fed. Reg. 35,174 (July 25, 2018).

IPBES BIODIVERSITY REPORT



Over 450 expert authors and contributors synthesized data and information from **15,000 scientific and government sources** to determine the status of biodiversity around the world with alarming results. The IPBES biodiversity report found that:

- The diversity within species, between species and of ecosystems – is declining **faster than at any time in human history**.
 - **25%** of assessed plant and animal species, or an estimated **1 million** species are currently threatened with extinction. This is estimated to be ten to a thousand times higher than normal background extinction rates and is **accelerating**.
 - Global indicators have shown an average decline in ecosystem condition by 47% with many continuing to decline by at least 4 percent per decade.
- For example, the report found that **66% of marine, 75% of terrestrial** ecosystems have already been lost.



This loss of diversity, including genetic diversity, poses a serious risk to global food security by undermining the resilience of many agricultural systems to threats such as pests, pathogens and climate change.

Human-caused degradation has reduced the productivity of nearly 1/4 of the land surface, and half a trillion dollars of global crops are at risk from pollinator loss.

Goals for conserving and sustainably using nature and achieving sustainability cannot be met by current trajectories, and goals for 2030 and beyond may only be achieved through transformative economic, social, political and technological changes.

Areas of the world projected to experience significant negative effects from global changes in climate, biodiversity, ecosystem functions and nature's contributions to people are also home to large concentrations of indigenous peoples and many of the world's poorest communities.



WILDLIFE CORRIDORS CONSERVATION ACT

TALKING POINTS

INTRODUCTION

In May 2019, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (**IPBES**) **released a report detailing the threat of extinction for 1 million species world wide.** Subsequently, it is estimated that **1 in 5 species in the United States is at risk of becoming extinct** in the coming decades if we do not act soon. **Leading scientists agree that protecting wildlife corridors is an important solution to the extinction crisis.** Famed wildlife biologist E.O. Wilson said "The Wildlife Corridors Conservation Act would provide the most important step of any single piece of legislation at the present time in enlarging the nation's protected areas and thereby saving large swaths of America's wildlife and other fauna and flora, especially in this critical time of climate change..."

SHORT DESCRIPTION OF THE BILL

(S.1499/ H.R. 2795)

- Grants authority to key federal agencies to designate and protect wildlife corridors on federal public lands and waters. Wildlife corridors can **only** be designated on federal land.
- Creates a \$50 million grant program for federal agencies, states, tribes, landowners and NGOs.
- Provides specific support and funding for tribes to protect wildlife corridors on tribal lands.
- Creates a shared federal wildlife corridor database to be a resource for federal agencies, states, tribes, landowners and private citizens.
- The bill will benefit a range of wildlife including migrating game species, fish, and birds such as mule deer, monarch butterflies, grizzly bears, salmon and loons.

SUPPORTING ORGANIZATIONS

NGOS, OUTDOOR RECREATION COMPANIES AND MORE

- Over 220 NGOs including Wildlands Network, Endangered Species Coalition, National Wildlife Federation, Center for Biological Diversity, National Parks Conservation Association, The Humane Society of America, National Audubon Society, Defenders of Wildlife, and Sierra Club.
- Outdoor Recreation Companies: Patagonia, Osprey Packs and Petzl.
- Native American Fish and Wildlife Society



WILDLIFE CORRIDORS CONSERVATION ACT TALKING POINTS

WILDLIFE CORRIDOR PROTECTION ENJOYS BROAD BIPARTISAN SUPPORT

- The Wildlife Corridors Conservation Act is bipartisan in the House of Representatives.
- Among Western voters, 86 percent support conservation of migration corridors.
- New England Governors and Eastern Canadian Premiers passed a resolution recognizing the importance of wildlife corridors (2013).
- The Western Governors' Association passed a resolution in support of protecting wildlife corridors (2019).
- The Trump administration awarded \$10.7 Million in grants to support protecting big game migration corridors to carry out Secretarial Order 3362 (2019).

STATES THAT HAVE PASSED WILDLIFE CORRIDOR BILLS

- New Mexico (2019)
- New Hampshire (2019)
- Oregon (2019)
- Wyoming (2018)
- California (2015)
- Colorado (2010)

SENATE AND HOUSE SPONSORS

SENATE

Sen. Tom Udall (D-NM)- Lead
Richard Blumenthal (D-CT)
Sen. Cory Booker (D- NJ)
Sen. Kamala Harris (D-CA)
Sen. Jeff Merkley (D-OR)
Sen. Bernie Sanders (D-VT)
Sen. Jon Tester (D-MT)
Sen. Sheldon Whitehouse (D-RI)
Sen. Ron Wyden (D-OR)
Sen. Dianne Feinstein (D-CA)
Sen. Tina Smith (D-NM)
Sen. Christopher Murphy (D-CT)
Sen. Jeanne Shaheen (D-NH)

HOUSE

Rep. Don Beyer (D-VA)- Lead
Rep. Vern Buchanan (R-FL)- Lead
Rep. Ben Ray Lujan (D-NM)

