



# ESA Basics

## *30 Years of Protecting Endangered Species*

When Congress passed the Endangered Species Act (ESA) in 1973, it recognized that our rich natural heritage is of “esthetic, ecological, educational, recreational, and scientific value to our Nation and its people.” It further expressed concern that many of our nation’s native plants and animals were in danger of becoming extinct.

The purpose of the ESA is to protect and recover imperiled species and the ecosystems upon which they depend. It is administered by the Interior Department’s U.S. Fish and Wildlife Service (FWS) and the Commerce Department’s National Marine Fisheries Service (NMFS). The FWS has primary responsibility for terrestrial and freshwater organisms, while the responsibilities of NMFS are mainly marine species such as salmon and whales.

Under the ESA, species may be listed as either “endangered” or “threatened.” Endangered means a species is in danger of extinction throughout all or a significant portion of its range. Threatened means a species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. All species of plants and animals, except pest insects and non-native species, are eligible for listing as endangered or threatened. For the purposes of the ESA, Congress defined species to include subspecies, varieties, and, for vertebrates, distinct population segments.

As of May 1, 2006, the FWS has listed 1,868 species worldwide as endangered or threatened, of which 1,300 occur in the U.S.

### How are Species Listed?

Section 4 of the ESA specifies that a species must be listed as endangered or threatened solely on the basis of its biological status and threats to its existence. When evaluating a species for listing, five factors are considered: 1) damage to, or destruction of, a species’ habitat; 2) overuse of the species for commercial, recreational, scientific, or educational purposes; 3) disease or predation; 4) the inadequacy of existing



*Bay Checkerspot Butterfly, USFWS Photo*

protection; and 5) other natural or human-related threats to the species’ survival. When one or more of these factors imperils the survival of a species, the FWS takes action to protect it. To ensure the accuracy of the data, the FWS decides all listings using sound science and peer review.

### Candidates for Listing

The FWS also maintains a list of “candidate” species. These are species for which there is enough information to warrant proposing them for listing but that have not yet been proposed because of higher listing priorities. While listing actions of higher priority go forward, the FWS works with states, tribes, private landowners, private partners, and other federal agencies to carry out conservation actions for these species to prevent further decline and possibly eliminate the need to list them.

### Protection

The ESA protects listed species and their habitats by prohibiting the “take” of listed animals and the interstate or international trade in listed plants and animals, including their parts and products, except under federal permit. Such permits generally are available only for certain conservation and scientific purposes.

### What is “Take”?

The ESA makes it unlawful for a person to take a listed animal without a permit. Take is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct.” Through regulations, the term “harm” is defined as “an act which actually

kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.” Listed plants are not protected from take, although it is illegal to collect or maliciously harm them on federal lands. Protections from commercial trade and the effects of federal actions do apply for plants. Some state laws contain their own restrictions on the take of listed species.

### Recovery

The law’s ultimate goal is to “recover” species so they no longer need protection under the ESA. Recovery plans describe the steps needed to restore a species to ecological health. Appropriate public and private agencies and institutions and other qualified persons assist in developing and implementing recovery plans. Involving the public and interested stakeholders in developing these plans is encouraged. Recovery teams may be appointed to develop and implement recovery plans.

### Federal Activities

Section 7 of the ESA requires federal agencies to use their legal authorities to promote the conservation purposes of the law. This section also requires federal agencies to consult with the FWS or NMFS to ensure that actions they authorize, fund, or carry out will not jeopardize listed species. The consulting agency then receives a “biological opinion” on the proposed action. In the relatively few cases where the FWS or NMFS determines that the proposed action will

jeopardize the species, they must offer “reasonable and prudent alternatives” about how the proposed action could be modified to avoid jeopardy. It is very rare to withdraw or terminate projects because of jeopardy to a listed species.

The ESA also requires the designation of “critical habitat” for listed species when it is judged to be “prudent and determinable.” Critical habitat includes geographic areas that contain the physical or biological features essential to the conservation of the species and that may need special management or protection. Critical habitat designations affect only federal agency actions or federally funded or permitted activities. Federal agencies are required to avoid “adverse modification” of designated critical habitat.

Critical habitat may include areas not occupied by the species at the time of listing but that are essential to its conservation. An area can be excluded from critical habitat designation if an economic analysis determines 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.

The ESA provides a process for exempting development projects from the restrictions of the law if a Cabinet-level “Endangered Species Committee” decides the benefits of the project clearly outweigh the benefits of conserving a species. Since its creation in 1978, the Committee has only been convened three times to make this decision.

### **Working with States**

The protection of listed species is also achieved through partnerships with the states. Section 6 of the ESA encourages each state to develop and maintain conservation programs for resident federally-listed threatened and endangered species. Federal financial assistance and incentives are available to promote state participation. Some state laws and regulations are even more restrictive than the ESA in granting exceptions or permits.

### **Working with Landowners**

Two-thirds of federally listed species have at least some habitat on private lands. The FWS has developed an array of tools and incentives to protect private landowners’ interests while encouraging them to manage their lands to benefit listed and at-risk species.

### **Habitat Conservation Plans**

Section 10 of the ESA provides relief to private landowners who want to develop land inhabited by listed species. Landowners can receive a permit for the take of a listed species that may occur incidental to otherwise legal activities, provided they have developed an approved habitat conservation plan (HCP). HCPs include an assessment of the likely impacts on the species from the proposed action, the steps that will be taken to minimize and mitigate those impacts, and the funding available to carry out those steps. When the FWS approves the HCP, the landowner can apply for an “incidental take” permit, which allows them to proceed with the proposed action.

HCPs benefit not only the landowners but also the species by securing and managing important habitat.

### **Safe Harbor Agreements**

A Safe Harbor Agreement (SHA) provides regulatory assurance for landowners who voluntarily aid in the recovery of listed species by improving or maintaining wildlife habitat on their lands. Under an SHA, a landowner can manage the property enrolled in the SHA and, at the end of the agreement, return it to originally agreed-upon “baseline” conditions for the species and its habitat, even if this means incidentally taking individuals of the covered species.

### **Candidate Conservation Agreements**

It is easier to conserve species before they need to be listed as endangered or threatened. Candidate Conservation Agreements (CCAs) are voluntary agreements between landowners (including federal land managing agencies) and one or more other parties that are intended to reduce or remove the threats to candidate or at-risk species. The parties to the CCA work with the FWS to design the voluntary conservation measures and monitor the effectiveness of plan implementation.

### **Candidate Conservation Agreements with Assurances**

Under a Candidate Conservation Agreement with Assurances (CCAA), non-federal landowners volunteer to work with the FWS on plans to conserve candidate and at-risk species. In return, the landowners receive regulatory assurances that, if a covered species is eventually listed, they will not be required to do anything beyond what is specified in the agreement, and they will receive an incidental take permit if the species becomes listed.

### **Conservation Banks**

Conservation banks are lands that are permanently protected and managed as mitigation for the loss elsewhere of listed species and their habitats. Conservation banking is a free market enterprise based on supply and demand of mitigation credits. By mitigating multiple development projects at a conservation bank, all parties involved, including the species, benefit. If the habitat supports a specific species (or multiple species), the landowner agrees to preserve and manage the land in perpetuity. In return, the landowner is given mitigation credits that can be sold to other landowners who need to mitigate for impacts on listed species resulting from activities on their lands.

### **Endangered Species Grants**

The ESA authorizes a number of federal grant programs to promote the conservation and recovery of listed plants and animals. Grants issued under section 6 of the ESA go to state and territorial agencies, which often are in partnership with private landowners.

Private individuals and groups can receive “Private Stewardship Grants” for their voluntary efforts on private property for the benefit of listed and at-risk species. The Service offers several other financial assistance opportunities that may benefit such species. Please visit [www.fws.gov/grants](http://www.fws.gov/grants) for additional information.

### **International Species**

The ESA also implements U.S. participation in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), a 169-nation agreement designed to prevent species from becoming endangered or extinct due to international trade. The law prohibits trade in ESA-listed species except under CITES permits.

### **For More Information**

For additional information about threatened and endangered species, landowner tools, grants, and current recovery efforts, contact the U.S. Fish and Wildlife Service at the address below, or visit <http://www.fws.endangered>.

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Endangered Species Program  
4401 N. Fairfax Drive, Room 420  
Arlington, VA 22203**

**<http://www.fws.endangered>**

**May 2006**