



# A History of the Endangered Species Act of 1973

“From the most narrow possible point of view, it is in the best interest of mankind to minimize the losses of genetic variations. The reason is simple: they are potential resources.”

– Leonor K. Sullivan, Chairman of the House Committee on Merchant Marine and Fisheries, July 27, 1973

Congress passed the Endangered Species Preservation Act in 1966, providing a means for listing native animal species as endangered and giving them limited protection. The Departments of Interior, Agriculture, and Defense were to seek to protect listed species, and, insofar as consistent with their primary purposes, preserve the habitats of such species. The Act also authorized the U. S. Fish and Wildlife Service to acquire land as habitat for endangered species. In 1969, Congress amended the Act to provide additional protection to species in danger of “worldwide extinction” by prohibiting their importation and subsequent sale in the United States. This Act called for an international meeting to adopt a convention to conserve endangered species. One amendment to the Act changed its title to the Endangered Species Conservation Act.

A 1973 conference in Washington, D. C. led 80 nations to sign the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which monitors, and in some cases, restricts international commerce in plant and animal species believed to be harmed by trade.

Later that year, Congress passed the Endangered Species Act of 1973. It

- defined “endangered” and “threatened” [section 3];
- made plants and all invertebrates eligible for protection [section 3];



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*The endangered Fender's blue butterfly and its host plant, the threatened Kincaid's lupine*

- applied broad “take” prohibitions to all endangered animal species and allowed the prohibitions to apply to threatened animal species by special regulation [section 9];
- required Federal agencies to use their authorities to conserve listed species and consult on “may affect” actions [section 7];
- prohibited Federal agencies from authorizing, funding, or carrying out any action that would jeopardize a listed species or destroy or modify its “critical habitat” [section 7];
- made matching funds available to States with cooperative agreements [section 6];
- provided funding authority for land acquisition for foreign species [section 8]; and

- implemented CITES protection in the United States [section 8].

Congress enacted significant amendments in 1978, 1982, and 1988, while keeping the overall framework of the 1973 Act essentially unchanged. The funding levels in the present Act were authorized through Fiscal Year 1992. Congress has annually appropriated funds since that time.

Principal amendments are listed below:

## 1978:

- Provisions were added to Section 7, allowing Federal agencies to undertake an action that would jeopardize listed species if the action is exempted by a Cabinet-level committee convened for this purpose;
- Critical habitat was required to be designated concurrently with listing a species, when prudent, and economic and other impacts of designation were required to be considered in deciding on boundaries [section 4];
- The Secretary of Agriculture (for the Forest Service) was directed to join the Secretaries of Interior, Commerce, and Defense in developing a program for conserving fish, wildlife and plants, including listed species; land acquisition authority was extended to all such species [section 5];
- The definition of “species” with respect to “populations” was restricted to vertebrates; otherwise, any species, subspecies, or variety of plant, or species or subspecies of animal remained eligible for protection under the Act [section 3].

## 1982:

- Determinations of the status of species were required to be made solely on the basis of biological and trade information, without consideration of possible economic or other effects [section 4];



Hawaiian stilt

- A final rule to determine the status of a species was required to follow within one year of its proposal unless withdrawn for cause. This requirement replaced a two-year limit that had been enacted in 1978 on adopting a final rule. Failure to meet the two-year deadline had been grounds for mandatory withdrawals of more than 1500 proposed species listings in 1979 [section 4];
- Section 10 included a provision to designate experimental populations of listed species that could be subject

to different treatment under section 4 for critical habitat, section 7 for interagency cooperation, and section 9 for prohibitions;

- Section 9 included a prohibition against removing endangered plants from land under Federal jurisdiction and reducing them to possession
- Section 10 introduced habitat conservation plans, providing “incidental take” permits for listed species in connection with otherwise lawful activities.

*In a valuable training exercise, a 26-ton Marine Corps tank plows through pickleweed in wetland mudflats, improving habitat for endangered Hawaiian stilts before the nesting season.*



## 1988:

- Monitoring candidate and recovered species was required, with adoption of emergency listing when there is evidence of significant risk [section 4];
- Several amendments dealt with recovery matters: 1) recovery plans were required to undergo public notice and comment, and affected Federal agencies were required to give consideration to those comments; 2) new subsection 4(g) required five years of monitoring recovered species; and 3) biennial reports were required on the development and implementation of recovery plans and on the status of all species with plans;
- A new section 18 required a report of all reasonably identifiable expenditures by the Federal government and States that received section 6 funds on a species-by-species basis on the recovery of endangered or threatened species and

- Protection for endangered plants was extended to include a prohibition on malicious destruction on Federal land and other “take” that violates State law [section 9].

## 2004:

National Defense Authorization Act for Fiscal Year 2004

Section 4(a)(3) exempted the Department of Defense from critical habitat designations so long as an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a) and acceptable to the Secretary of the Interior is in place.

## 2009:

National Defense Authorization Act for 2009 established the authority of Defense facilities to participate in off-site mitigation banking for protected species.

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August 2011**