

Endangered Species Act (ESA) ^[1]



Time to Restore Balance

Western oil and natural gas companies ensure that impacts to plant and wildlife species and their habitat are avoided, minimized, or mitigated by reducing surface disturbance and employing advanced reclamation measures, surveys, best management practices (BMP), and monitoring programs. The industry takes seriously its obligations to protect species listed as threatened or endangered under the Endangered Species Act (ESA).

However, misuse of the ESA can directly prevent energy development, ranching, farming, timber, mining and other productive uses of the land. Far too often the ESA has been used as a means to prevent or delay responsible economic activity rather than for species protection. When applied too broadly or for species that do not truly warrant a listing, the ESA can have very negative economic and job impacts on western states, local communities, and the nation.

When making ESA listing decisions, U.S. Fish & Wildlife Service (FWS) should recognize state and local plans and voluntary conservation agreements while balancing protection of species with sustaining economic activities and the needs of states and local communities. Federal ESA listings often thwart existing state and local efforts to protect species, and can even be a disincentive to successful voluntary conservation efforts. Rather than imposing one-size-fits-all species listings that harm communities and obstruct on-the-ground conservation, FWS should enable state and local protection plans, voluntary conservation agreements, and common-sense management policies.

While protection and recovery of endangered species and their habitat should be the core focus of the ESA, less than 2% of listed species have been recovered since its passage in 1973. Why? Because FWS is far too focused on responding to listing petitions and litigation rather than taking action to recover species while working with states and local communities to protect at-risk species.

Over the last decade the number of petitioned species has increased dramatically, as environmental groups have used the petition process to force FWS to make voluminous listing decisions. The most egregious example of this strategy was a single petition in 2010 for over 400 species, leading to a legal settlement with FWS that requires action on 878 species over seven years. The 2011 settlements did not bring an end to large, multi-species petitions. Since the settlement, the same groups have filed petitions requesting listing or uplisting of more than 120 species, including one petition for 53 species.

Western Energy Alliance has documented ^[2] how environmental groups employ a strategy of repeatedly overwhelming FWS with listing petitions, and then sue and settle with FWS. The “sue-and-settle” strategy clearly undermines the ESA.

It is time to reform the ESA to refocus it back on protecting and recovering species, and away from serving special-interest groups and rewarding lawyers. We are happy to see that FWS is currently working to reform the petition process. In May 2015 FWS released a draft rule ^[3] that would “improve the content and specificity of petitions and enhance the efficiency and effectiveness of the petitions process to support species conservation.”

Specifically, the proposed rule would limit petitions to one species, require consultation with relevant state agencies prior to submittal, and require a certification that all relevant information was included in the petition, including information that contradicted the need for a listing. Western Energy Alliance supported the draft rule ^[4]. After receiving significant opposition to the rule from special interest groups who favor sue-and-settle, however, FWS updated its draft proposal and weakened the provisions that would affect positive change.

Congress needs to pass legislation to update the ESA with sensible, targeted reforms to improve the consistency and effectiveness of the law, increase transparency and regulatory certainty, and update the scientific standards by which decisions are made. *Western Energy Alliance supports federal legislation that:*

- Ensures a greater focus on species recovery and listing only truly at-risk species
- Recognizes and encourages the efforts of states, tribes, local governments, and others for on-the-ground species protection
- Reduces litigation and sue-and-settle
- Limits the use of taxpayer dollars to cover the attorney fees of special-interest groups
- Ensures counties, states, landowners, and others directly affected by listing decisions are given a seat at the table for ESA lawsuits and settlements
- Requires more transparency and accountability of data and science used in ESA decisions
- Requires FWS to base listing decisions on at least two credible scientific studies published in peer-reviewed journals from at least two scientists or groups of scientists working independently
- Requires that petitions under ESA meet this same scientific standard

Feature content:

No

Quick Facts:

- Since enactment of the ESA in 1973, only 34 listed species have recovered [5] and had their endangered or threatened designation removed.
- A 2011 court settlement between the U.S. Fish & Wildlife Service (FWS) and two environmental groups requires the agency to make 878 listing determinations by 2018. The backroom deal could result in hundreds of new species listings and the designation of millions of acres of critical habitat across the West.
- Environmental litigants regularly sue FWS because it does not meet statutory deadlines mandated by the ESA. Since the 2011 settlement, environmental groups have filed lawsuits to list or uplist an additional 107 species [6]—about one lawsuit every other week!

Related Content:

[WGA ESA Initiative](#) [7]

[WGA Resolution on ESA Reform](#) [8]

[Sue and Settle](#) [2]

[Wildlife](#) [9]

[Congressional Endangered Species Act Working Group Final Report](#) [10]

[U.S. Fish and Wildlife Service Court Settlement Listing Workplan](#) [11]

[ESA Reform Legislation Supported by Western Energy Alliance](#) [12]

[National Endangered Species Act Reform Coalition \(NESARC\) ESA Frequently Asked Questions](#) [13]

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Links:

[1] <https://www.westernenergyalliance.org/knowledge-center/wildlife/endangered-species-act-esa>

[2] <http://www.westernenergyalliance.org/knowledge-center/legal/sue-and-settle>

[3] <http://www.fws.gov/home/feature/2015/proposed-revised-petition-regulations.pdf>

[4] <http://cdn.westernenergyalliance.org/sites/default/files/Western%20Energy%20Alliance%20ESA%20Petition%20Process%20Comments.pdf>

[5] http://ecos.fws.gov/tess_public/reports/delisting-report

[6] <http://www.westernenergyalliance.org/sites/default/files/Methodology%20-%20Legal%20Analysis%20of%20Petitions%20since%20WEG%20CBD%20settlements%202015%20Update.pdf>

[7] <https://www.westgov.org/initiatives/esa-initiative>

[8] http://westgov.org/images/2016-08_Species_Conservation_and_ESA.pdf

[9] <https://www.westernenergyalliance.org/knowledge-center/wildlife>

[10] <http://westernenergyalliance.org/sites/default/files/Congressional%20Endangered%20Species%20Act%20Working%20Group%20Final%20Report%20-%20Feb.%202014.pdf>

[11] http://www.fws.gov/endangered/improving_esa/listing_workplan_FY13-18.html

[12] <http://westernenergyalliance.org/system/files/Western%20Energy%20Alliance%20ESA%20legislative%20packet.pdf>

[13] <http://westernenergyalliance.org/sites/default/files/NESARC%20FAQ%20and%20ESA%20101%20document%2005-2013.pdf>