

FAQS ON THE ENDANGERED SPECIES ACT

Originally enacted in 1973, the framers of the Endangered Species Act envisioned a law which would protect species believed to be on the brink of extinction. When the law was enacted, there were 109 species listed for protection. As of May 2013, there are over 1,450 species that occur in the United States that are designated as threatened or endangered under the ESA. World-wide, there are over 2,000 threatened or endangered species. Further, the U.S. Fish and Wildlife Service (FWS) is on a path to increase the number of listed species by more than 20% in the next five years.

ESA & CONGRESS

When was the Endangered Species Act (ESA) enacted?

The ESA was signed into law on December 28, 1973.

Has the ESA been amended or updated?

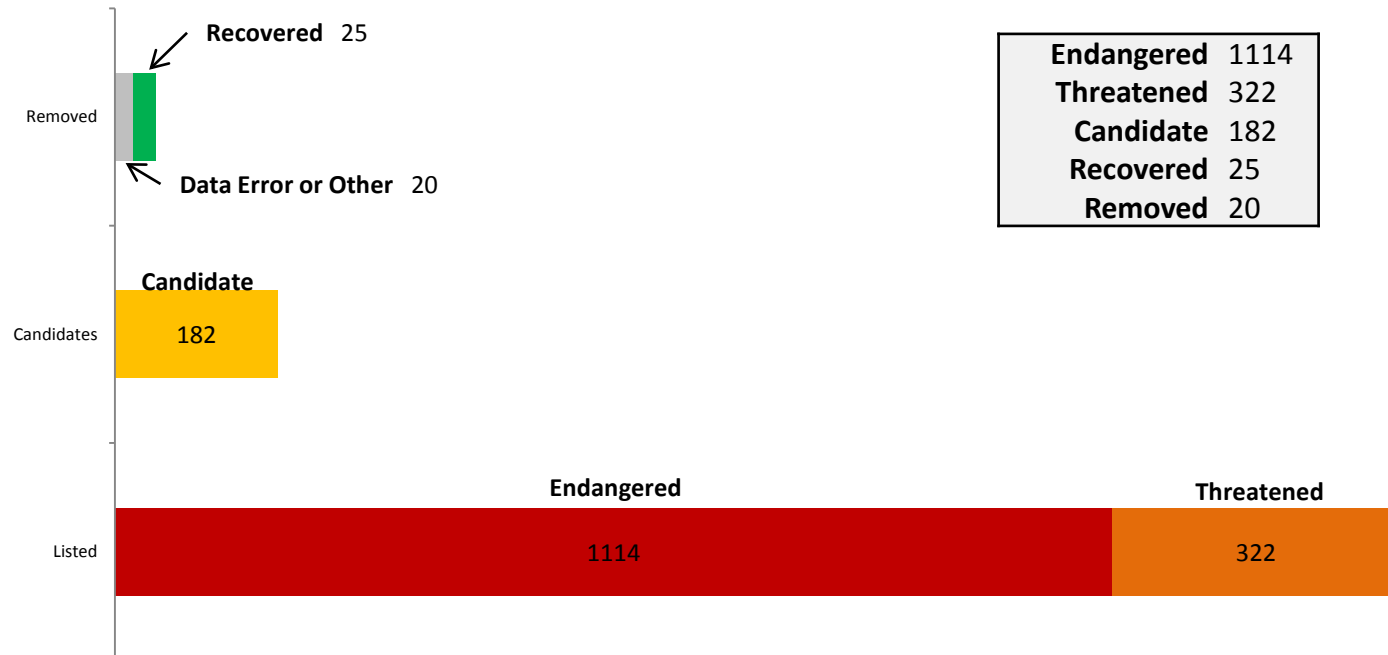
The ESA **has not** been substantially updated **since 1988**. After enactment, Congress revisited and reauthorized the ESA on a five-year cycle with amendments in 1978, 1982 and 1988. Since 1988, the only amendments to the ESA were related to the application of the Act to Department of Defense lands.

Is it true that the ESA has expired?

Authorization for funding of the ESA **expired on October 1, 1992**. Annually, Congress has appropriated funds to allow for continued implementation of the Act.

ESA LISTINGS

As of May 2013



Endangered	1114
Threatened	322
Candidate	182
Recovered	25
Removed	20

Note: There is nearly a **20% increase in the number of species listings** expected between 2011-2016 due to recent closed door listing settlements between FWS and environmental groups.

FAQS ON THE ENDANGERED SPECIES ACT

ESA OVERVIEW

Who administers the ESA?

The ESA is administered primarily by the U.S. Fish and Wildlife Service (FWS) of the Department of the Interior. The only exception is that the NOAA Fisheries - National Marine Fisheries Service (NMFS) has jurisdiction over the ESA's application to marine species and anadromous fish species.

What are the key elements of the ESA?

Section 4	Section 6	Section 7	Section 9	Section 10
Listing of species (Sec. 4(a) & (b)(1))	Federal/state agreements for state management of areas established for conservation of listed species (Sec. 6(b))	Directs all Federal agencies, to use their authorities to carry out programs to conserve listed species (Sec. 7(a)(1))	"Prohibited acts" for endangered species includes "taking" endangered species as well as the import, export, possession and interstate shipment (Sec. 9(a))	Procedures for development of habitat conservation plans for protection of listed species and/or designated critical habitat and authorizes issuance of incidental take authorizations for participants in an HCP (Sec. 10(a))
Designation of critical habitat (Sec. 4(b)(2) & Sec. 4(b)(6)(C))	Federal financial assistance to States that have entered into cooperative agreements supporting the conservation of endangered and threatened species (Sec. 6 (c))	Requires federal agencies to consult with FWS and NOAA/NMFS to ensure that their actions are not likely to jeopardize the continued existence of listed species or result in destruction or adverse modification of critical habitat (Sec. 7(a)(2))	"Take" prohibition means that persons may not harass, harm, pursue, hunt, shoot, wound, kill, trap capture or collect an endangered species (or attempt to do any of these acts).	
Procedures for consideration of petitions (Sec. 4(b)(3))				
Special rules applying "take" prohibitions for threatened species (Sec. 4(d))				
Recovery plans (Sec. 4(f))				

Are there rules and regulations implementing the Endangered Species Act?

Yes. ESA regulations are found at:

- 50 C.F.R. Part 17 (FWS – Endangered and Threatened Wildlife and Plants)
- 50 C.F.R. Parts 223, 224 and 226 (NOAA/NMFS – Threatened and Endangered Marine and Anadromous Species and Designated Critical Habitat)
- 50 C.F.R. Part 402 (FWS & NOAA/NMFS Joint Regulations for Implementation of Section 7 Consultations)

What other policies or guidance are relied upon by FWS and NOAA/NMFS in administering the ESA?

FWS and NOAA/NMFS have issued certain "handbooks" that provide guidance to their agency offices on the implementation of key elements of the ESA:

- Endangered Species Listing Handbook (*Issued in 1994*)
- Handbook for Habitat Conservation Planning and Incidental Take Permitting Process (*Issued in 1996*)
- Endangered Species Act Consultation Handbook (*Issued in 1999*)

Significant ESA policies:

- No Surprises Policy (1999)
- Safe Harbor Policy (1999)
- Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) (2003)

UNDERSTANDING THE ESA LISTING PROCESS

What is a species?

A species includes any species or subspecies of fish, wildlife or plant, and any distinct population segment of any vertebrate species that interbreeds when mature. Excluded is any species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of the ESA would present an overwhelming and overriding risk to man.

What is the difference between an endangered species and a threatened species?

Under the ESA, certain species of plants and animals (both vertebrate and invertebrate) are listed as either “endangered” or “threatened” according to assessments of the risk of their potential extinction.

An **endangered** species is a species that is found to be in danger of extinction within the foreseeable future throughout all or a significant portion of its range.

A **threatened** species is a species that is found to be likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

How does a species get listed?

Most listings occur as a result of the submission of a petition to list a species. FWS and NOAA/NMFS also have independent authority to review and propose species for listing under the ESA.

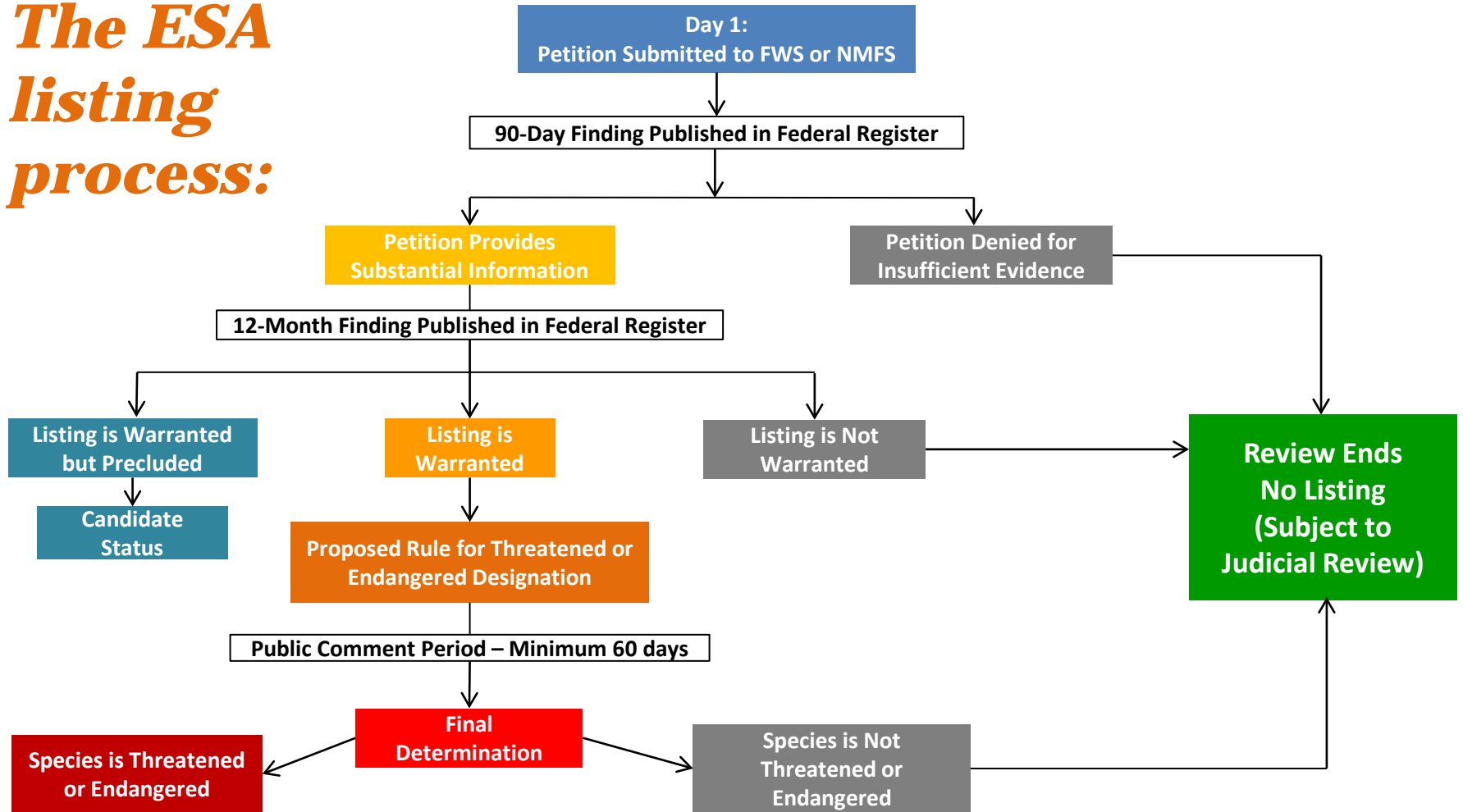
What are the criteria for listing?

A species is only determined to be an endangered species or a threatened species based on any one or more of the following factors (economics or other considerations not listed here are not permissible under the Act):

- the present or threatened destruction, modification, or curtailment of its habitat or range;
- overutilization for commercial, recreational, scientific, or educational purposes;
- disease or predation;
- the inadequacy of existing regulatory mechanisms; or
- other natural or man-made factors affecting its continued existence.

FAQs ON THE ENDANGERED SPECIES ACT

The ESA listing process:



Effects of Listing Determination

Critical Habitat Designation
(Issued at Time of Listing if
Determinable)

“Take”
Prohibitions
Apply

Recovery
Plan
Process

Consultation Requirement
for Federal Agency Actions



202.333.7481

nesarc@vnf.com

www.nesarc.org