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## Endangered Species Time Line

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# 3 Endangered Species Time Line

*Leona K. Svancara, J. Michael Scott, Dale D. Goble, Frank W. Davis,  
and Donna Brewer*

The Endangered Species Act (ESA) is embedded in a web of statutes designed to regulate relationships between humans and other species that stretch back nearly a millennium (Goble, this volume; Goble and Freyfogle 2002). This chapter presents a time line of federal actions taken to protect wildlife beginning with passage of the Land and Water Conservation Fund Act in 1963 (Act of May 28, 1963). Earlier laws to protect wildlife are discussed elsewhere (Goble, this volume). The time line emphasizes federal actions that conserve species at risk of extinction and significant events in the course of implementing the Endangered Species Act.

The story is one of expanding protection, moving from the Land and Water Conservation Fund Act's recognition of species threatened with extinction, through the protection of migratory birds, to the first federal statutes to protect endangered species—the Endangered Species Preservation Act (Act of October 15, 1966a), the Endangered Species Conservation Act (Act of December 5, 1969), and the Endangered Species Act itself in 1973. In this progression, federal law has moved from protection of only fish and game to include nearly all at-risk plants and animals.

The enactment of the ESA in 1973 was not the end of the story, however. The act has been amended several times over the past thirty years and administrative actions have also modified its on-the-ground application. The original ESA embodied a top-down regulatory approach but the subsequent amendments have increased incentives that would encourage private landowners, government agencies, and other organizations to collaborate in recovery efforts for endangered species.

## 1963

- Land and Water Conservation Fund Act (Act of May 28, 1963)

- Seeks to ensure “adequate outdoor recreation resources” by providing funds to the Department of the Interior and to states for land acquisition
- Provides the first formal recognition of endangered species by Congress through authorization to purchase land “for the preservation of species of fish or wildlife that are threatened with extinction”

## 1964

- Department of the Interior appoints the Committee on Rare and Endangered Wildlife Species

## 1966

- Committee on Rare and Endangered Wildlife Species publishes *Rare and Endangered Fish and Wildlife of the United States* (Committee on Rare and Endangered Wildlife Species 1966). The book
  - Is known as the “Redbook” because of its red cover
  - Is the first official listing of species considered in danger of extinction
  - Contains 331 species in three categories of concern: 130 rare and endangered species, 74 peripheral species, and 127 species of undetermined status
- Endangered Species Preservation Act (Act of October 15, 1966a)
  - Is the first federal endangered species legislation
  - Authorizes the secretary of the interior to list native species of fish and wildlife as endangered
  - Authorizes acquisition of endangered species habitat for inclusion in the newly established National Wildlife Refuge System
  - Encourages cooperation with states to conserve endangered species

## 1967

- The first formal listing of endangered species is made: fourteen mammals, thirty-six birds, three reptiles, three amphibians, and twenty-two fish (see Wilcove and McMillan 2006)

## 1968

- U.S. Fish and Wildlife Service buys the first habitat to protect an endangered species: 2,300 acres in Florida for the Key deer (*Odocoileus virginianus clavium*)

## 1969

- Endangered Species Conservation Act (Act of December 5, 1969), amends and renames the Endangered Species Preservation Act of 1966 to extend protection to species in danger of “worldwide extinction” by
  - Increasing the procedural formality for listing species as endangered
  - Extending protection to some invertebrates
  - Requiring a five-year review of the endangered species list
  - Directing the secretaries of state and the interior to convene a meeting to develop international conventions on the conservation of endangered species (which eventually led to the enactment of the Convention on International Trade in Endangered Species of Wild Fauna and Flora [CITES])
- Nevada enacts the first state endangered species act, which
  - Provides limited protection for species and explicit exceptions to protect agricultural interests

## 1973

- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES 1973) (entered into force July 1, 1975)
  - Restricts international trade in plant and animal species at risk of extinction
- Endangered Species Act (Act of December 28, 1973)
  - Is signed by President Richard M. Nixon on December 28
  - Authorizes the listing of species as endangered and threatened
  - Requires federal agencies to ensure that actions they authorize, fund, or carry out do not jeopardize the existence of listed species or modify critical habitat
  - Prohibits unauthorized taking, possession, sale, and transport of endangered wildlife species; the secretary of the interior is authorized to extend the prohibitions to threatened species by regulation
  - Provides authority to acquire land for the conservation of listed wildlife species
  - Authorizes cooperative agreements and grants-in-aid to states that establish adequate programs for conservation of endangered and threatened wildlife species
  - Imposes civil and criminal penalties for violating the act or regulations

- Implements CITES and the Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere

## 1976

- Endangered Species Act Amendments of 1976 (Act of July 12, 1976)
  - Simplifies administrative processes in emergency situations, clarifies enforcement procedures, provides for disposal of forfeited and abandoned property, and clarifies the definition of “commercial activity”
  - Exempts from ESA prohibitions whale parts and products (scrimshaw) held lawfully before the date of enactment

## 1977

- First plant species are listed as endangered: San Clemente Island Indian paintbrush (*Castilleja grisea*), San Clemente Island larkspur (*Delphinium variegatum* ssp. *kinkiense*), San Clemente Island broom (*Lotus dendroideus* ssp. *traskiae*), and San Clemente Island bush-mallow (*Malacothamnus clementinus*)

## 1978

- First recovery plan is published for Kirtland’s warbler (*Dendroica kirtlandii*)
- *Tennessee Valley Authority v. Hill* (1978)
  - U.S. Supreme Court holds that Tellico Dam cannot be completed because it would extirpate the snail darter
- Section 7 regulations are promulgated
- Endangered Species Act Amendments of 1978 (Act of November 10, 1978)
  - Reauthorizes the Endangered Species Act
  - Expands listing procedures by adding additional requirements, including the opportunity for public hearings
  - Directs the secretary of the interior to review the list of endangered and threatened species every five years
  - Adds a requirement that critical habitat generally be designated at the time of species listing
  - Requires consideration of economics in designating critical habitat
  - Directs secretaries of the interior and agriculture to develop a program for conserving listed species

- Amplifies and formalizes consultation provisions, including a requirement that federal agencies prepare biological assessments in cases where the secretary of the interior has advised that a listed species may be present
- Establishes a cabinet-level Endangered Species Committee with authority to exempt federal actions from compliance with the jeopardy prohibition of section 7
- Obligates the Endangered Species Committee to grant an exemption when the secretary of defense requests it based on national security
- Authorizes cooperative agreements with states for the conservation of endangered and threatened plants
- Restricts the definition of “species” by excluding “populations” of invertebrates

## 1979

- Energy and Water Development Appropriations Act (Act of September 25, 1979)
  - Authorizes the completion of Tellico Dam by exempting it from all federal statutes, including the Endangered Species Act
- Endangered Species Act Amendments (Act of December 28, 1979)
  - Extends and increases the authorization of appropriations
  - Directs the secretary of the interior to designate the Endangered Scientific Authority for the implementation of CITES
  - Creates the International Convention Advisory Commission
  - Directs the U.S. Fish and Wildlife Service to establish a prioritization system for listing
  - Extends scrimshaw exemptions for an additional three years

## 1981

- Secretary of the Interior James Watt seeks to redefine the regulatory definition of “harm”; when the proposal produces a storm of negative comments, the term is only cosmetically modified (USFWS 1981a, 1981b)
- Lacey Act Amendments (Act of November 16, 1981); prohibits interstate and foreign shipment of wildlife and plants illegally taken, possessed, transported, or sold under federal, tribal, state, or foreign law
- Listing priority guidelines are promulgated

## 1982

- Endangered Species Act Amendments of 1982 (Act of October 13, 1982)
  - Reauthorizes the Endangered Species Act
  - Significantly restructures listing procedures, including a requirement that determination of a species' status generally be made within one year of the listing proposal
  - Specifies that listing is to be made "solely on the basis of the best scientific and commercial data available" and hence that economics are not to be considered
  - Authorizes the development of habitat conservation plans (HCPs) as a condition for issuing permits to private parties to take a listed species when incidental to otherwise lawful activities
  - Adds "warranted but precluded" category to listing provisions
  - Establishes procedures for reintroducing experimental populations of listed species
  - Prohibits removing listed plants from land under federal jurisdiction
  - Extends annual authorizations under the act through fiscal year 1985

## 1983

- First habitat conservation plan is approved for the San Bruno elfin butterfly (*Callophrys mossii bayensis*) in San Bruno Mountain, California
- Listing and recovery priority guidelines are promulgated (USFWS 1983a, 1983b)

## 1985

- Exemptions regulations are promulgated (Endangered Species Committee 1985)
  - Establishes procedures for applying for an exemption to allow a federal action that jeopardizes the continued existence of a listed species
  - Provides procedures and standards for evaluating such applications by the secretary of the interior and the Endangered Species Committee
- First delisting due to recovery occurs (brown pelican [*Pelecanus occidentalis*])

## 1986

- Interagency cooperation section 7 consultation regulations are promulgated (USFWS and NMFS 1986)

## 1987

- Last dusky seaside sparrow (*Ammodramus maritimus nigrescens*) dies in captivity (Walters 1992)

## 1988

- Endangered Species Act Amendments of 1988 (Act of October 7, 1988)
  - Reauthorizes the Endangered Species Act
  - Redefines “person” to clarify the inclusion of municipalities
  - Provides equal authority to the departments of the interior and agriculture for enforcing restrictions on import and export of listed plants
  - Requires the secretary of the interior to monitor all petitioned species that are candidates for listing
  - Emphasizes that the act’s emergency listing procedures are available for delisted species that again became threatened
  - Directs the secretary of the interior to develop and review recovery plans for listed species without showing preference for any taxonomic group
  - Specifies minimum content requirements for recovery plans
  - Requires reports on recovery plans and on the status of listed species to Congress every two years
  - Provides for public review of new or revised recovery plans prior to final approval
  - Requires monitoring of recovered species that have been delisted
  - Clarifies permissible uses of funds allocated to states and establishes criteria for these allocations
  - Prohibits damaging or destroying endangered plants on federal lands and on private lands when it is a violation of state law
  - Increases civil and criminal penalties provided under section 11
  - Requires the secretary of commerce to contract for a National Academy of Sciences study for conservation status of sea turtles and provides for establishment of a sea turtle coordinator
  - Requires the administrator of the Environmental Protection Agency in cooperation with the secretaries of the interior and agriculture to conduct a study identifying reasonable and prudent means to implement an endangered species pesticide labeling program and to report to Congress within one year
  - Extends the exemption from criminal sanctions for sales of pre-act scrimshaw
  - Authorizes the U.S. Fish and Wildlife Service to monitor the import and export of protected plants

## 1990

- Guidelines on the recovery planning for listed species are issued (USFWS 1990b)
- First salmonid (Sacramento River evolutionarily significant unit of chinook salmon [*Oncorhynchus tshawytscha*]) is listed as endangered

## 1991

- National Marine Fisheries Service issues its definition of evolutionarily significant unit (see Waples, this volume)
  - A distinctive group of Pacific salmon (*Oncorhynchus* spp.), steelhead (*Oncorhynchus mykiss*), or sea-run cutthroat trout (*Oncorhynchus clarki*) that are uniquely adapted to a particular area or environment and cannot be replaced
  - A population that is reproductively isolated from other population units of the same species and represents an important component of the evolutionary legacy of the biological species
- An injunction is issued by U.S. District Court Judge William Dwyer prohibiting timber harvesting of federal old-growth forests in the Pacific Northwest to protect the northern spotted owl (*Strix occidentalis caurina*); the decision is based on the National Forest Management Act rather than on the Endangered Species Act

## 1992

- Endangered Species Act authorization expires; the act remains in force through annual appropriations for the departments of commerce and the interior

## 1994

- Section 7 draft guidelines are issued
- “No Surprises” policy is announced; the policy guarantees that participants in a habitat conservation plan would suffer no further restrictions without compensation, even if the species continues to decline
  - Intended to minimize social and economic impacts consistent with timely recovery of a species listed as threatened or endangered
  - Provides a participation plan process involving all appropriate agencies in a strategy to implement one or more recovery actions

- Six joint ESA policies are issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service regarding
  - Peer review in ESA activities and associated regulations (USFWS and NMFS 1994a)
  - An ecosystem approach under the ESA (USFWS and NMFS 1994b)
  - Information standards to provide criteria, establish procedures, and provide guidance to ensure decisions made by the agencies under the ESA represent the best commercial and scientific data available (USFWS and NMFS 1994c)
  - Section 9 prohibitions to establish a procedure at the time a species is listed as threatened or endangered in order to identify the maximum extent of activities that may violate section 9 of ESA and to increase understanding of the prohibitions by the public (USFWS and NMFS 1994d)
  - The role of state agencies in ESA activities (USFWS and NMFS 1994e)
  - Recovery plan participation and implementation (USFWS and NMFS 1994f)

## 1995

- First safe harbor agreement approved
- *Babbitt v. Sweet Home* (1995)
  - U.S. Supreme Court upholds the U.S. Fish and Wildlife Service definition of “harm” to include destroying or modifying habitat for an endangered or threatened species if the action results in the taking of the species
- Budget rider prohibits the listing of additional species and further designation of critical habitat until end of fiscal year 1995, effectively eliminating all funding for listing and prelisting activities under the ESA
- Gray wolf (*Canis lupus*) is reintroduced into Yellowstone National Park and central Idaho

## 1996

- Petition management guidelines are issued (USFWS and NMFS 1996d)
- Listing priority guidelines are issued for all emergency listings, for review status of all other proposed and candidate species, and for delisting actions (USFWS 1996c)
- Final guidelines for habitat conservation plans are issued (USFWS and NMFS 1996a)
- Policy is issued entitled “Policy Regarding the Recognition of Distinct Vertebrate Population Segments (Vertebrate Population Policy)” (USFWS and NMFS 1996b; see Waples, this volume)

- Clarifies interpretation by the U.S. Fish and Wildlife Service and National Marine Fisheries Service of the phrase “distinct population segment of any species of vertebrate fish or wildlife”
- Policy for Conserving Species Listed or Proposed for Listing under the ESA While Providing and Enhancing Recreational Opportunities (USFWS and NMFS 1996c)

## 1997

- Secretarial order on native Americans and the Endangered Species Act is issued (U.S. Department of the Interior and U.S. Department of Commerce 1997)
- Safe harbor agreements draft policy is issued
- Candidate conservation agreements draft policy is issued

## 1998

- “No Surprises” rule is revised (USFWS and NMFS 1998)
  - Provides regulatory assurances to the holder of a habitat conservation plan that no additional land use restrictions or financial compensation will be required for species covered by the permit
  - Precludes the federal government from requiring certain conservation measures from the permit holder
- First marine plant (Johnson’s seagrass [*Halophila johnsonii*]) is listed as threatened

## 1999

- Section 7 handbook final guidelines are issued (USFWS and NMFS 1999a)
- Safe harbor agreements final policy is issued (USFWS and NMFS 1999b)
  - Provides incentives for private and other nonfederal property owners to restore, enhance, or maintain habitats for listed species
  - Specifies that future safe harbor agreements will be formalized by issuance of a permit to “enhance the propagation or survival” of an endangered or threatened species
  - Requires that actions undertaken by the landowner produce a “net conservation benefit” to the species
  - Specifies how baseline conditions are to be determined
  - Provides participating landowners with technical assistance to develop safe harbor agreements

- Candidate conservation agreements with assurances final policy is issued (USFWS and NMFS 1999c)
  - Provides for issuing assurances as an incentive for nonfederal landowners to implement conservation measures for species that are candidates for listing or are likely to become candidates in the near future
- Regulations are issued for safe harbor and candidate conservation agreements (USFWS 1999f)
  - Codifies minimum permit requirements and conditions that must be met for nonfederal landowners to receive the assurances
- Listing priority guidelines are issued for fiscal year 2000 (USFWS 1999j)

## 2000

- Final addendum to the Handbook for Habitat Conservation Planning and Incidental Take Permitting Process (USFWS and NMFS 2000a)
  - Provides guidance for conducting the incidental take permitting program by ensuring that biological goals are identified
  - Expands the public comment process
- *Wyoming Farm Bureau Federation v. Babbitt* (2000)
  - U.S. Court of Appeals for the Tenth Circuit upholds reintroduction of wolves in Yellowstone National Park as an experimental population
- Controlled Propagation of Listed Species Policy (USFWS and NMFS 2000c)
  - Provides guidance and consistency for use of controlled propagation as a component of a species recovery strategy
  - Ensures smooth transitions between various phases of conservation efforts such as propagation, reintroduction, and monitoring
  - Authorizes the controlled propagation of listed species when recommended in an approved recovery plan or when necessary to prevent extinction of a species

## 2001

- *Sierra Club v. U.S. Fish and Wildlife Service* (2001)
  - U.S. Court of Appeals for the Fifth Circuit holds that the U.S. Fish and Wildlife Service has acted arbitrarily and capriciously in failing to designate critical habitat for the Gulf sturgeon (*Acipenser oxyrinchus desotoi*)

- Fifth Circuit's interpretation of the scope of habitat protection may prove significant

## 2003

- Conservation Banking Guidance (USFWS 2003g)
  - Addresses the establishment, use, and operation of conservation banks to offset adverse impacts to listed species
- Draft candidate conservation agreements handbook is issued (USFWS 2003j)
- Policy is issued for evaluating conservation efforts when making listing decisions (USFWS and NMFS 2003a)
  - Identifies criteria to be used in determining whether conservation efforts yet to be implemented can be relied upon to avoid listing a species as threatened or endangered
  - Provides guidance to U.S. Fish and Wildlife Service personnel to determine whether a recently adopted or implemented conservation effort contributes to unnecessarily listing a species or to listing a species as threatened rather than endangered
  - Provides information to groups interested in developing agreements or plans that would make it unnecessary for agencies to list a species under the Endangered Species Act
- *Spirit of the Sage Council v. Norton* (2003)
  - U.S. District Court for the District of Columbia invalidates the permit revocation rule and remands the "No Surprises" rule to the agency, holding that it is procedurally invalid
  - Revises safe harbor agreements and candidate conservation agreements with assurances (USFWS 2003h)