



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
1315 East-West Highway  
Silver Spring, Maryland 20910

The Honorable Thomas R. Carper  
Chairman,  
Committee on Environment and Public Works  
United States Senate  
Washington, DC 20510

September 12, 2022

Dear Chairman Carper:


On behalf of the Secretaries of the Interior and Commerce, and in coordination with the Secretary of Agriculture, we are pleased to provide the following report pursuant to section 301 of the America's Conservation Enhancement Act (ACE Act, P.L. 116-188). The ACE Act requires that the Secretaries of the Interior and Commerce, in coordination with the Secretary of Agriculture, assess the factors affecting successful conservation activities under the Endangered Species Act (ESA) and report our findings to the Committees on Appropriations and Environment and Public Works of the Senate and the Committees on Appropriations and Natural Resources of the House of Representatives.

In the enclosed report, the U.S. Fish and Wildlife Service and National Marine Fisheries Service summarize relevant information and findings according to each of the specific requests identified in section 301 of the ACE Act. Overall, our findings indicate that the ESA continues to be a powerful and effective conservation law regardless of the nature of threats that led to species' listings under the ESA. However, we identified several barriers to efficient implementation of some of the ESA's provisions and provide a series of recommendations to address these barriers.

If you have any questions, please feel free to contact Mr. Gary Frazer, the U.S. Fish and Wildlife Service's Assistant Director for Ecological Services (202-208-4646), and Mr. Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service (301-427-8000).

Sincerely,

  
Janet Coit  
Assistant Administrator,  
National Marine Fisheries Service

  
Martha Williams Director  
U.S. Fish and Wildlife Service

U.S. Fish and Wildlife Service &  
National Marine Fisheries Service's  
Report as requested under Section  
301 of the America's Conservation  
Enhancement Act (ACE Act, P.L. 116-  
188)

Identical Letters Sent To:

The Honorable Shelley Moore Capito  
Ranking Member, Committee on Environment and Public Works  
United States Senate  
Washington, DC 20510

The Honorable Patrick Leahy  
Chairman, Committee on Appropriations  
United States Senate  
Washington, DC 20510

The Honorable Richard C. Shelby  
Vice Chairman, Committee on Appropriations  
United States Senate  
Washington, DC 20510

The Honorable Raúl M. Grijalva  
Chair, Committee on Natural Resources  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Bruce Westerman  
Ranking Member, Committee on Natural Resources  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Rosa DeLauro  
Chair, Committee on Appropriations  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Kay Granger  
Ranking Member, Committee on Appropriations  
U.S. House of Representatives  
Washington, DC 20515

## STUDY TO REVIEW CONSERVATION FACTORS.

In conducting this requested study, the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS; collectively, the Services) assessed relevant information for domestic species to complete each of the following actions as laid out in subsection (b) of section 301 of the ACE Act (P.L. 116-188):

- “(1)(A) to review any factors that threaten or endanger a species, such as wildlife disease, for which a listing under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) would not contribute to the conservation of the species; and (B) to identify additional conservation measures that can be taken to protect and conserve a species described in subparagraph (A);
- (2) to review any barriers to— (A) the delivery of Federal, State, local, or private funds for such conservation activities, including statutory or regulatory impediments, staffing needs, and other relevant considerations; or (B) the implementation of conservation agreements, plans, or other cooperative agreements, including agreements focused on voluntary activities, multispecies efforts, and other relevant considerations;
- (3) to review factors that impact the ability of the Federal Government to successfully implement the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*);
- (4) to develop recommendations regarding methods to address barriers identified under paragraph (2), if any;
- (5) to review determinations under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) in which a species is determined to be recovered by the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, or the Secretary of Commerce, acting through the Assistant Administrator of the National Marine Fisheries Service, but remains listed under that Act, including— (A) an explanation of the factors preventing a delisting or downlisting of the species; and (B) recommendations regarding methods to address the factors described in subparagraph (A); and
- (6) to review any determinations under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) in which a species has been identified as needing listing or uplisting under that Act but remains unlisted or listed as a threatened species, respectively, including— (A) an explanation of the factors preventing a listing or uplisting of the species; and (B) recommendations regarding methods to address the factors described in subparagraph (A).”

Overall, the Services’ findings indicate that the Endangered Species Act (ESA) continues to be a powerful and effective conservation law regardless of the nature of threats that led to species’ listings under the ESA. However, we identified several barriers to efficient implementation of some of the ESA’s provisions and provide a series of recommendations to address these barriers. Below, we summarize relevant information and findings according to each of the specific requests identified in section 301 of the ACE Act.

**Sec. 301 (b)(1)(A) and (b)(1)(B): Review of factors that threaten or endanger species, such as wildlife disease, for which a listing under the ESA would not contribute to their conservation and identification of additional conservation measures that can be taken for such species**

We did not identify any instances in which listing under the ESA does not contribute to the conservation of the listed species.

Section 4(a)(1) of the ESA requires the Secretaries of the Interior and Commerce (Secretaries) to determine whether any species is an endangered species or a threatened species because of any of the factors listed in that section (16 U.S.C. 1533). These factors are as follows:

- A. the present or threatened destruction, modification, or curtailment of habitat or range;
- B. overutilization for commercial, recreational, scientific, or educational purposes;
- C. disease or predation;
- D. the inadequacy of existing regulatory mechanisms; or
- E. other natural or manmade factors affecting the species' continued existence (16 U.S.C. 1533(a)(1), see also 50 CFR 424.11(c)).

Once listed as a threatened or endangered species, certain conservation measures and protections are, or can be, extended to those species under the ESA. Those measures include the development and implementation of recovery plans (16 U.S.C. 1533(f)); designation of critical habitat (16 U.S.C. 1533(a)(3)(A)); and a requirement that all Federal agencies use their authorities to further the conservation purposes of the ESA, and ensure their actions are not likely to jeopardize the species or result in destruction or adverse modification of designated critical habitat (16 U.S.C. 1536).

For endangered species, protections also include prohibitions related to "take" and trade (16 U.S.C. 1538). Take is defined as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532(19)). These prohibitions do not apply to species listed as threatened unless protective regulations are issued under section 4(d) of the ESA (16 U.S.C. 1533(d)). Section 4(d) protective regulations may prohibit, with respect to threatened species, some or all of the acts the ESA automatically prohibits with respect to endangered species. Listed species may also benefit from financial assistance the Secretaries are authorized to provide to States and U.S. Territories under section 6 of the ESA (16 U.S.C. 1535).

In cases where species have been listed as endangered primarily as a result of ongoing overutilization or overexploitation (i.e., ESA section 4(a)(1)(B)), the specific threats that led to the endangered status of the species are directly addressed upon listing due to the automatic protections afforded under section 9 of the ESA (e.g., prohibitions on take and commercial trade). Many species listed as threatened as a result of overutilization also directly benefit from their listing under the ESA as a result of take prohibitions extended to them under section 4(d) of

the ESA (e.g., elkhorn and staghorn corals, 73 FR 64264, October 29, 2008; green sturgeon, 75 FR 30714, June 2, 2010).

Species listed as a result of habitat loss and destruction (i.e., ESA section 4(a)(1)(A)) also directly benefit from listing under the ESA. For example, when the Gulf of Maine distinct population segment of Atlantic salmon (*Salmo salar*) was listed as an endangered species in 2009, impacts to freshwater habitats as a result of dams were identified as one of the most significant threats to the continued persistence of these fish (74 FR 29343, June 19, 2009). Since this listing and the subsequent publication of an ESA Recovery Plan, the Services and their partners, including the Maine Department of Marine Resources and the Penobscot Indian Nation have worked to reconnect the ocean and freshwater habitats needed by the salmon to complete their lifecycle and, to date, have successfully installed numerous fishways and removed multiple dams, including two major hydroelectric dams. Protections afforded under section 7 of the ESA have also resulted in increased cooperation between the Services and other Federal agencies, in particular the Federal Energy Regulatory Commission, on Federal projects affecting the listed salmon and its designated critical habitat.

Species listed as a result of threats that are not being adequately addressed through other regulatory mechanisms (i.e., ESA section 4(a)(1)(D)), such as species that are incidentally captured in commercial fishing gear or that are subject to unsustainable or poorly monitored take, also benefit from the protections afforded under the ESA. Once species are listed, in addition to the requirement under section 4(f) to develop a recovery plan, these species can benefit from ESA section 10 conservation plans, which mitigate and minimize the impacts of the incidental take, and additional enforcement of take prohibitions.

Species listed as a result of disease (i.e., ESA section 4(a)(1)(C)) or other natural or manmade factors (i.e., ESA section 4(a)(1)(E)) also benefit from the protections afforded under the ESA. Examples include the black abalone (*Haliotis cracherodii*), which was listed as an endangered species in 2009 as a result of withering syndrome disease (74 FR 1937, January 14, 2009), and the northern long-eared bat (*Myotis septentrionalis*), which was listed in 2015 as a result of white-nose syndrome. Following listing, these species have benefitted from the focused attention, resources, and expertise of multiple Federal, State, and other partners that have studied the spread of the particular diseases in an effort to more clearly understand and remediate the impacts to the respective species. As a result of listing and the requirement under section 4(f) to develop a recovery plan, urgently needed conservation action for black abalone are now being undertaken, including monitoring the spread of withering syndrome, testing the efficacy of translocating juveniles to improve spawning success, and developing captive breeding methods. As a result of listing, an ESA section 4(d) rule was put in place for northern long-eared bats to prohibit forms of take in locations where WNS is impacting the bats, thereby protecting the bats in key habitats (e.g., hibernacula) while methods to potentially counteract WNS are developed (81 FR 1900, January 24, 2016). However, we note that due to the on-going severity of impacts to northern long-eared bats from WNS, the species was recently proposed for listing as an endangered species (87 FR 16442, March 23, 2022).

Many other species facing existential, but more intractable, threats have similarly benefited from being listing under the ESA. Examples include the 20 coral species listed in 2014, all of which are threatened in part by increased ocean temperatures and ocean acidification driven by climate change (79 FR 53852, September 10, 2014), and the candy darter (*Etheostoma osburni*), a native freshwater fish listed as an endangered in 2018 as a result of hybridization with a closely related but introduced darter species, the variegate darter (*Etheostoma variatum*). In these instances, listing under the ESA has helped focus the resources and expertise of Federal, State, and other external partners in implementing near-term conservation actions to slow the decline of these species, while developing longer-term strategies to address the more challenging threats. Since the listing of corals, NMFS has worked to reduce localized non-climate stressors, such as sedimentation, contaminants, and overfishing, thereby enhancing the ability of the species and reef systems to withstand climatic events. This is in addition to completing critical habitat designations for two of the coral species (73 FR 72209, November 26, 2008), proposing designations for an additional 12 species (85 FR 76262, November 27, 2020; 85 FR 76302, November 27, 2020), and engaging with partners to develop a recovery plan. By listing and designating critical habitat for the candy darter, USFWS successfully elevated public awareness about the candy darter's status and the problems arising from the seemingly innocuous act of dumping bait buckets (i.e., the source of the introduced darter; 83 FR 58747, November 21, 2018).

In summary, the Services have listed species under the ESA as a result of one or more of each of the ESA section 4(a)(1) factors, and in each instance, the ESA listing has provided substantial conservation benefits to those species. In many instances, listing under the ESA has had direct and immediate conservation benefits for the species, particularly through the provisions of sections 4(d), 7 and 9. Below, we provide a series of recommendations that would allow for improved implementation of the ESA.

#### **Sec. 301 (b)(2)(A) and (b)(4): Review of barriers to the delivery of funds for conservation activities and recommendations**

In assessing barriers to funding, we reviewed relevant funding opportunities administered by the Services and conducted a more focused review of the specific funding authorized under section 6 of the ESA. The Departments of Commerce and the Interior do not have oversight or control over the delivery of State, local, and private funds for conservation activities; therefore, our assessment was focused on Federal funding sources and programs.

Both Services administer a range of funding opportunities that do not specifically target ESA-listed species but may support the conservation of threatened and endangered species. Within NMFS, these funding opportunities include the John H. Prescott Marine Mammal Rescue Assistance Grant Program, Coastal and Marine Habitat Restoration Grants, the Bycatch Reduction Engineering Program, Atlantic Salmon Habitat Restoration Partnership Grants, and the Coral Restoration Foundation. NMFS also administers the Pacific Coastal Salmon Recovery

Fund, which was established by Congress in 2000 to reverse the declines of Pacific salmon and steelhead and has since been essential in preventing the extinction of the 28 listed salmon and steelhead species on the West Coast.

Within USFWS, funding opportunities that may support threatened and endangered species include State and Tribal Wildlife Grants, Great Lakes Restoration Initiative (in coordination with the Environmental Protection Agency), Neotropical Migratory Bird Conservation Act Program, Partners for Fish and Wildlife, Coastal Program, John H. Prescott Marine Mammal Rescue Assistance Grant Program, and the Wildlife and Sport Fish Restoration Program. Through these programs, Federal financial assistance is directed towards a diverse set of research, management, and conservation objectives and reaches a diverse set of partners, including States, Tribes, institutions of higher learning, and non-profit organizations.

The Services also administer separate funding programs that specifically target ESA-listed species. For instance, NMFS administers the Species Recovery Grants to Tribes Program, which funds projects that implement priority recovery actions for threatened, endangered, and candidate species (i.e., species for which NMFS has issued a positive petition finding). USFWS administers the Recovery Challenge grant program, which is designed to enhance and increase partnerships with agencies and organizations implementing high-priority recovery actions, in particular for genetically sound breeding, rearing, and reintroduction programs, as well as to develop or update recovery plans or develop recovery outlines. Both Services also administer grant programs under section 6 of the ESA to support the development and implementation of State and Territorial programs to conserve and recover federally listed and at-risk species. Under section 6 of the ESA, the Services are authorized to enter into cooperative agreements with States and Territories that establish and maintain adequate and active programs for the conservation of endangered and threatened species of fish and wildlife and plants that are resident in the particular State or Territory. Once such an agreement is established, the Services are authorized to assist in, and provide Federal funding for, the implementation of the particular State's or Territory's conservation program. This financial assistance, provided in the form of grants, can be used to support projects that have direct conservation benefits for federally listed species, species that are candidates for listing, as well as recently delisted species. Eligible activities may include, but are not limited to:

- Introduction of species into suitable habitats within their historical range
- Habitat acquisition
- Enhancement or restoration of habitat
- Surveys and inventories of habitats
- Species status surveys
- Propagation of animals and plants
- Research, such as genetic analysis to determine genetic health and population structure
- Public education and outreach tools, such as website development or coordination workshops with local landowners to address a specific threat to a species

USFWS provides this financial assistance under section 6 of the ESA in the form of competitive grants using annual funding from the Cooperative Endangered Species Conservation Fund (CESCF), which was established in 1988 under section 6(i) of the ESA. NMFS also provides this financial assistance in the form of competitive grants, known as Species Recovery Grants to States, which are funded using annual appropriations from Congress. In fiscal years 2020 and 2021, USFWS awarded approximately \$114 million in CESCF grants to 52 States and Territories and NMFS awarded approximately \$12 million in Species Recovery Grants to 18 States and Territories for species and habitat conservation actions, including habitat acquisition, conservation planning, habitat restoration, status surveys, captive propagation and reintroduction, research, and education.

Barriers to successful delivery of funding to support conservation of threatened and endangered species depend on the project, partner, or type of award. Most of the previously mentioned Service grant programs have been in place for many years and the relevant program offices and grant officers successfully obligate funding on an annual basis. In some cases, a barrier that may arise is the compounding of ESA-mandated matching requirements for States and Territories (section 6(d)(2)(i and ii) that receive multiple Federal awards. This requirement can be a barrier to awarding conservation grant funding to natural resource management agencies that have limited budgets and yet often must provide 10%, 25%, or 35% of project costs using non-Federal sources for each Federal award. In some instances, the multiple match requirements may preclude the intended grantee from accepting the award. For land-acquisition grants to protect important habitat for listed species, the Federal appraisal process can be lengthy and discourage landowners from selling their property to the Federal government, resulting in a loss for conservation. The Services do their best to work with the partners to successfully obligate funding consistent with policies and requirements.

The Services continue to find that match or cost-sharing requirements are a very effective way to ensure a significant level of commitment from recipient agencies and organizations and to help extend the available Federal funding across more recipients and activities. To prevent these requirements from becoming a barrier, some of these cost-sharing requirements could be relaxed for good cause, specifically for States, Territories, and federally recognized Tribes all of which have limited annual budgets. USFWS recognizes that demand exists to fund recovery actions that do not require a cost match from the States or private landowners. Because of this demand, USFWS included in its FY22 budget request funding that could be used for grants without cost matching. Cost-match requirements can limit the ability to engage with economically disadvantaged landowners or communities with limited resources. Dedicating funding to support on-the-ground recovery of listed species, with an emphasis on partnerships with economically disadvantaged landowners, will facilitate conservation within these communities while expanding recovery activities across the range of listed species, thus leading to delisting or downlisting sooner.



In addition to administering grant programs that deliver much-needed conservation funding, the Services also fund conservation activities with their Congressionally appropriated program funds. In 2019 Defenders of Wildlife<sup>1</sup> published results of a study that estimated approximately \$1.5 billion annually is needed to address ESA recovery actions. Conserving endangered and threatened species requires additional funding, prioritization, collaboration, and cooperation to be successful.

### **Sec. 301 (b)(2)(B) and (b)(4): Review of barriers to the implementation of conservation agreements and plans and recommendations**

The Services use multiple types of conservation agreements and plans to advance the recovery of threatened and endangered species, as well as candidate and at-risk species. These include Recovery Plans, section 10 conservation plans (often referred to as habitat conservation plans or HCPs), safe harbor agreements (SHAs), candidate conservation agreements (CCAs), and candidate conservation agreements with assurances (CCAAs). As mentioned previously, under section 6 of the ESA, the Services also enter into cooperative agreements with States and Territories and provide funding to those States and Territories to support conservation programs for their resident threatened and endangered species. These multiple forms of plans and agreements were considered in order to identify any barriers to the implementation of conservation actions for listed, candidate, and at-risk species.

Recovery Plans are developed in accordance with requirements set forth in section 4 of the ESA and identify recovery goals and actions to provide a roadmap for each species' recovery. Recovery Plans are developed with the input and engagement of other Federal agencies, States, Tribes, and other stakeholders, and identify and prioritize the specific actions that can be taken by all relevant partners. Recovery Plans may address one listed species or multiple species. Implementation of recovery actions is tracked through multiple mechanisms, including USFWS' Environmental Conservation Online System database<sup>2</sup> and NMFS Recovery Action database,<sup>3</sup> and progress towards recovery is tracked at the species level through completion of 5-year status reviews.<sup>4</sup> Progress in meeting recovery objectives is also summarized and reported to Congress biennially.<sup>5</sup>

The ESA requires that conservation plans are provided as part of an application for a permit under section 10(a)(1)(B) of the ESA. Those permits are issued to non-Federal entities to authorize take of listed species that is incidental to otherwise lawful activities. The conservation plans must specify what steps the applicant will take to minimize and mitigate the impacts of that

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<sup>1</sup> [ESA recovery costs 2019 \(defenders-cci.org\)](https://defenders-cci.org/esa-recovery-costs-2019)

<sup>2</sup> [ECOS: Home \(fws.gov\)](https://ecos.fws.gov/)

<sup>3</sup> [NOAA Fisheries Recovery Action Database](https://www.noaa.gov/data-reports-and-publications/fisheries-recovery-action-database)

<sup>4</sup> [NOAA Fisheries 5-year Reviews](#); [USFWS 5-year Reviews](#)

<sup>5</sup> [NOAA Fisheries Recovery Reports to Congress-2017-2018](#); [USFWS Recovery Reports to Congress](#)

take and the funding that will be available to implement such steps. USFWS has approved about 1,500 of these plans, and about 31 have been approved or are pending with NMFS.

Although these conservation plans are effective in ameliorating the impact of incidental take of listed species (e.g., bycatch in State fisheries, habitat loss caused by private development), they require dedicated agency staff as well as significant investment of resources by the applicants during both the development and implementation phases. To preemptively address potential barriers to seeking and receiving section 10(a)(1)(B) permits, the Services provide extensive assistance and guidance to applicants (*see, e.g., HCP toolbox*<sup>6</sup>). Through the section 6 funding program, NMFS and USFWS also provide grants to States for HCP Planning Assistance (permit application development). However, as part of the incidental take permitting process, applicants must be able to provide funding assurances for plan implementation. This can be a barrier for some individual landowners or for State or local governments that receive limited annual appropriations or have limited flexibility in how their funds can be allocated.

SHAs, permitted under section 10(a)(1)(A) of the ESA, are voluntary agreements involving private or other non-Federal property owners that provide incentives through regulatory assurances to property owners to restore, enhance, or maintain habitats and/or populations of listed species. SHAs provide certainty relative to future property-use restrictions, even if the conservation efforts attract listed species onto enrolled properties or increase the numbers or distribution of listed species already present on their properties. In addition, at the end of the agreement period, participants may return the enrolled property to the baseline conditions that existed at the beginning of the SHA. USFWS has enrolled landowners in approximately 115 SHAs, and NMFS currently has four SHAs along the West coast for listed salmon and steelhead.

CCAs and CCAAs are voluntary conservation agreements between one or both of the Services and one or more public or private parties that identify specific conservation measures that the participants will voluntarily undertake to conserve the covered species. CCAs can be developed with Federal and non-Federal partners, and they identify threats to candidate species, plan the measures needed to address the threats and conserve these species, identify willing landowners, develop agreements, and design and implement conservation measures and monitor their effectiveness. CCAAs, permitted under section 10(a)(1)(A) of the ESA, provide only non-Federal landowners with incentives for engaging in voluntary proactive conservation efforts through assurances that no additional conservation obligations will be imposed should the covered species become listed. USFWS and our partners have signed approximately 53 CCAAs and 102 CCAs. (As most species under NMFS' authority do not occur in habitats subject to private landownership, these types of conservation agreements are uncommon for NMFS.)

Although these voluntary conservation efforts are largely successful, several factors may prevent or delay their development. Because the efforts are voluntary and often require multiple, cooperating partners or government jurisdictions, significant time must be invested by each

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<sup>6</sup> [USFWS Habitat Conservation Plans | Overview](#)

partner and the Services in building relationships and establishing trust. In addition, there can be confusion among stakeholders and a general lack of understanding about what tools are available, how these tools might benefit the applicant and species, and how to complete the application process. As a result, significant outreach by the Services is required in order to cultivate interested and willing applicants. USFWS maintains a public website that lists numerous tools to educate landowners regarding voluntary conservation mechanisms, including SHAs, CCAAs, and CCAs.<sup>7</sup> Applications associated with the ESA permitting processes also require sufficient level of biological or ecological understanding and analysis. This often results in the need for applicants to hire consulting firms, which in turn may be a financial barrier for some applicants. In some cases, development of needed partnerships and associated applications can take years and, as a result, may deter potential applicants from pursuing conservation agreements. USFWS is expanding HCP Planning Assistance grants to include funding for CCAA and SHAs with the intention to address the financial barrier of developing these plans and agreements.

While many of the aforementioned barriers are beyond the scope and capacity for the Services to address, the Services can help ameliorate some of these barriers by enhancing their current outreach and education efforts with respect to ESA section 10(a)(1)(B) and (A) plans, agreements, and permits. This can be achieved using multiple means, including electronic media and online training opportunities. When travel-related issues due to the ongoing pandemic resolve, in-person forms of outreach, including regional workshops and attendance at annual professional and resource-agency meetings, can also be employed to increase awareness about these multiple conservation tools as well as provide training and resources to better assist potential applicants.

### **Sec. 301 (b)(3): Review of factors impacting successful implementation of the ESA**

In the decades since its passage, the Services have successfully implemented the provisions of the ESA. This is evidenced by the prevention of extinction of over 99% percent of the species listed under the ESA and the recovery of species ranging from the bald eagle and the Eastern population of Steller sea lions to the interior least tern and the lesser long-nosed bat.

Despite this success and the tremendous impact of the ESA in protecting and preserving the Nation's natural heritage for future generations, over 1,600 domestic species (a group that includes species, subspecies, distinct population segments of vertebrate species) are currently listed as threatened or endangered under the ESA. Recovering these species is a task the Services cannot accomplish alone. As discussed above, one of the greatest challenges in meeting the goal of recovery is cultivating the many, necessary partnerships and conservation agreements, plans, and initiatives and maintaining these over the long-term. The partnerships that are needed in order to implement ESA recovery plans and actions over the long term require significant investment of time in relationship-building and coordination. The length of time often required to

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<sup>7</sup> [USFWS Tools For Landowners | Overview](#)

demonstrate success in meeting recovery objectives can frustrate some partners and may deter others from coming forward to participate. Nurturing these partnerships while meeting statutory requirements (listing, consultations) is a continual challenge for the Services. Additionally, the funding the Services receive for recovery actions, specifically to draft, update, and implement recovery plans, is insufficient to complete needed work.

Successful conservation of threatened and endangered species is also exacerbated by the existential threat of climate change, which is impacting species distributions and abundances, and the habitats upon which they depend. The Services continue to rise to this increasing challenge through new training courses, better use of scenarios planning, and development of climate-smart recovery plans. With the support of Congress, NMFS has also expanded efforts to improve scientific understanding of changing ocean conditions and develop climate-informed advice necessary for effective management of our marine resources into the future. USFWS continues partner with scientists from USGS' Climate Adaptation Science Centers to refine the development of species status assessments and to develop internal guidance for the use of climate-science data in species classification determinations and critical habitat designations.

**Sec. 301 (b)(5) and (b)(6): Review of barriers to listing, reclassification, and delisting and related recommendations**

Collectively, the Services make listing, reclassification, and delisting determinations for dozens of species every year. NMFS does not experience barriers in making listing, reclassification, and delisting decisions; and no species under NMFS' jurisdiction have recovered but remain listed under the ESA. On the other hand, USFWS has in the past received several petitions requesting to list hundreds of species at a time and, as a consequence, has a backlog of species awaiting classification determinations. Even with changes in the implementing regulations in 2016 (81 FR 66462) to no longer allow multi-species petitions, the agency lacks the staff resources to address the backlog of petitioned actions and keep pace with new petitions. For those petitions that present substantial information, the ESA requires that a review of the species' status be conducted and a finding be published within 12 months of the date the petition was received. As of fiscal year 2022, USFWS has more than 200 backlogged and overdue 12-month findings. Because of the timelines mandated by the ESA, USFWS is routinely sued for missing the deadlines for these actions. This results in diversion of staff and resources to focus on litigation instead of completing status reviews and listing determinations. Because of this, USFWS has developed prioritization tools and public tracking reports that provide transparency regarding how and when USFWS assesses species.

USFWS maintains a national Listing Workplan<sup>8</sup> that is used to schedule species-classification actions for the current fiscal year and the following 5 or more years. The Workplan is updated regularly to incorporate additional species and to reflect USFWS' consideration of new information over time.

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<sup>8</sup>[USFWS National Listing Workplan for Domestic Species](#)

In order to assess ongoing conservation efforts and ensure that species are appropriately classified under the ESA, the Services conduct periodic status reviews of each listed species at least once every five years. A five-year review evaluates available information to determine whether a species status has changed since the time of its listing or its last status review and to assess its progress toward recovery. These reviews assist us and our partners in identifying conservation needs and better targeting and prioritizing conservation efforts for federally listed species. Upon completion of a five-year review, we can make one of four possible recommendations:

- reclassify the species from threatened to endangered (uplist),
- reclassify the species from endangered to threatened (downlist),
- remove the species from the Lists of Endangered and Threatened Wildlife and Plants (delist), or
- maintain the species' current classification.

Due to current staffing levels and competing workload across all aspects of ESA implementation, USFWS often cannot immediately move from a 5-year review to a proposed change in species status. Therefore, USFWS has developed a 3-year national workplan that is used to schedule and track progress on species recommended for delisting and downlisting. USFWS has made significant progress in evaluating species for delisting and downlisting and in proposing rules as appropriate to either delist or downlist species. However, USFWS lacks the funding and staffing levels to more rapidly address the more than 70 actions that remain on the 3-year workplan.

In closing, the ESA is one of our most powerful tools for preventing the extinction of species and advancing conservation of endangered and threatened species and their habitats. Below is a summary of our findings.

- Listing under the ESA has had direct and immediate conservation benefits for numerous species, regardless of the threats facing those species, and has prevented the extinction of 99% the species listed.
- Delivery of funds through section 6 of the ESA has been a valuable conservation tool. However, we note that in some cases the required cost match is a barrier to some entities seeking funding opportunities. We recognize the demand to fund recovery actions that do not require a cost match from the States or private landowners exceeds funding availability through existing programs. Land-acquisition grants for protection of endangered or threatened species require an appraisal process that can be time consuming, which may discourage individuals from selling their land.
- Conservation plans and agreements are effective means of advancing the conservation of species and their habitats. Barriers in the application process, which can be time-consuming and expensive, can be a disincentive for some potential applicants.

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- Collectively the Services successfully complete dozens of classification decisions and rules each year. While NMFS does not experience barriers in making these classification decisions, USFWS has jurisdiction over significantly more species and lacks adequate funding and staffing to address many outstanding actions. To focus its limited resources on the highest priority work, USFWS has developed publicly available classification workplans to prioritize and schedule current and future work.