

CUTTING THE SAFETY NET

THE OBAMA ADMINISTRATION'S STEALTH ATTACK ON THE ENDANGERED SPECIES ACT



Over the past two years, the Obama administration has quietly passed a series of regulatory changes that substantially weaken the Endangered Species Act.

The changes:

- Limit the number of species that qualify for endangered species protections;
- Weaken protections for endangered species' critical habitat;
- Excuse federal agencies from the important task of considering and mitigating the cumulative effects of their actions on endangered species;
- Place severe obstacles to the right of every citizen to petition to protect imperiled plants and animals, making it less likely that species receive life saving protections.

These changes sharply limit the scope and effectiveness of the Endangered Species Act and dramatically alter some of the key components of the Act that have helped it to prevent the extinction of 99 percent of the plants and animals it protects and put many on the road to recovery. Not since the Reagan presidency has an administration pushed regulatory changes that so severely undermine the Endangered Species Act.

Here are the details of the regulatory changes and their current status:

Weakening Protection for Endangered Species Critical Habitat

The first [regulatory change](#) was a rule proposed by the administration in May 2014 that severely undermines protections for endangered species' critical habitat. The Endangered Species Act requires protection of critical habitat for all endangered species. The designation of "critical habitat" has proven to be an essential tool for species recovery, with species that have designated habitat being twice as likely to be recovering as those without it.

Critical habitat protects species by prohibiting federal agencies from “adversely modifying” — that is, hurting — the places where endangered species live through the actions they fund, permit or carry out. The Obama administration’s policy will enable more habitat destruction by redefining “adverse modification” as only those actions that harm the *entirety* of a species’ designated critical habitat, a change that will give a green light to the many federal actions that destroy small portions of critical habitat. **If enacted, the new proposal could allow the proliferation of projects that harm a species’ habitat without assurance that the cumulative effects will be taken into account** — a particularly problematic development because the Fish and Wildlife Service already has a dismal record of tracking and limiting cumulative impacts on wildlife.

Limiting the Species That Qualify for Endangered Species Protection

In July 2014 the administration finalized a [policy](#) first conceived under the Bush administration that severely limits when species qualify for endangered species protection. Under the Act, a species qualifies as endangered if it is “in danger of extinction in all or a significant of portion of its range,” meaning that a species need not be at risk everywhere it occurs to qualify for protection.

This provision, as originally written in the Act, is vital to saving species because it allows federal wildlife agencies to proactively provide protection long before plants and animals are at risk of going extinct globally and ensures that we don’t lose species from extensive stretches of the country. The new policy essentially nullifies the provision by requiring not merely that a species be endangered in a portion of its range, but that the loss of that one portion threatens the survival of the species as a whole. The policy also specifies that historic portions of a species’ range can never be considered significant. **In effect, and in direct contravention of the statute, only those species at risk of global extinction will see protection under this policy.**

Had this policy been in place in the 1970s when the Endangered Species Act was passed, species like the bald eagle, gray wolf and grizzly bear would never have been protected and put on the road to recovery in the lower 48 states because all three species still had healthy populations in Alaska and Canada.

Exempting Cumulative Effects

The third regulatory change [finalized](#) by the administration on May 11, 2015, frees federal agencies, such as the U.S. Forest Service or Bureau of Land Management, from the duty of quantifying or limiting the amount of harm to endangered species allowed under overarching management plans, including regional forest plans, plans for individual national forests, plans for BLM resource areas and many others.

Under the Act, all federal agencies are required to consult with the U.S. Fish and Wildlife Service or National Marine Fisheries Service to ensure their actions don’t jeopardize the continued existence of species or adversely modify their critical habitat. The consultation requirement applies to the development of overarching plans, such as national forest management plans by the U.S. Forest Service or leasing plans for onshore and offshore oil and gas development. The regulatory change eliminates a long-held requirement that the wildlife agencies set a limit on the amount of harm to endangered species that can occur under these overarching plans.

This will all but ensure that cumulative impacts from individual timber sales, development projects, oil and gas drilling operations or other projects will never be considered or curbed, increasing the risk that species will be driven to extinction from a death by a thousand cuts. This is already a serious problem. A 2009 U.S. Government Accountability Office report found that the Fish and Wildlife Service routinely fails to track cumulative impacts to endangered species, concluding that the Service “lacks a systematic method for tracking cumulative take of most listed species.” It noted that the agency only had such a system for three out of 497 federal protected species in the western states. The Obama administration’s regulatory change essentially codifies this problem.



Severely Limiting the Ability of Citizens to Petition for Protection of Species

The most recent [proposal](#), which was published on May 26, 2015, by the Obama administration, would place crippling burdens on citizens filing petitions to protect species as threatened or endangered under the Endangered Species Act, **ultimately making it more difficult for imperiled species to get lifesaving protections.**

The Endangered Species Act expressly allows citizens to petition for protection of species, and a majority of the more than 1,500 species awarded protection received it following a petition. The filing of a petition triggers what is supposed to be a two-year process and includes three public comment periods, but unfortunately, on average, has taken more than a decade to complete. These delays have led to a backlog of hundreds of species needing protection — a backlog that has been in place for decades.

The administration's proposal requires petitioners to provide advance notice of the petition to all states in the range of the species, to append any information from states to the petition itself, and to certify that all relevant information has been provided in the petition. It also bars petitions seeking protection for more than one species. These changes will discourage citizens from submitting petitions to protect species, worsen delays in species receiving protection, and invite litigation challenging petition determinations from states hostile to protection of wildlife. The requirement that citizens only petition for one species at a time will decrease efficiency in protecting species and runs counter to a longstanding policy of the U.S. Fish and Wildlife Service to use multi-species, ecosystem-based listing packages when possible.

Conclusion

In combination, these policies and regulatory changes represent the most serious rollback of endangered species protections in a generation. This comes at a time when endangered species are facing growing threats from a burgeoning human population, growing numbers of invasive species and introduced diseases, climate change and increased industrial and agricultural pollution.