

THE PEREGRINE FUND

WORLD CENTER FOR BIRDS OF PREY

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The ESA—from noble intent to politicized strategy: time for change

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The Peregrine Fund is working to establish a self-sustaining wild population of Aplomado Falcons in the south-western United States and northern Mexico through captive propagation, release, and management with the ultimate goal of removing the species from the Endangered Species List.

Photo courtesy of the Peregrine Fund

There is no organization that believes more strongly in saving species and our natural world than The Peregrine Fund. Our record proves it. Now, we as others—our Federal Agencies and field conservationists—recognize that the ESA has too often become a legal strategy in an ongoing battle over land use. The already very limited funding appropriated for on-the-ground species recovery work is thus victimized by the cost of litigation.

Here are some first steps to a more efficient and effective ESA.

Redefine and reassess key terms—starting with *Critical Habitat*.

Critical habitat should be applied to special, localized habitats that are critical to species survival such as springs that serve as the entire distribution area for a species.

But when the term is applied to major habitat units encompassing millions of acres (e.g. old growth forest for the spotted owl or the proposed designation of major reaches of the Chihuahuan Desert in southern New Mexico for the largely non-existent aplomado falcon, then its use becomes questionable. And considering the costs involved in designating and defending critical habitat against lawsuits, its overly broad application becomes unjustifiable. Designation of critical habitat lasts only as long as the species requiring it remains listed. It is not a permanent solution to habitat protection, on the contrary, it can become a disincentive for species recovery.

Modify the definition of *take* and *harm* to encompass all needs for protection of essential habitat of listed species. Where essential habitat needs protection on private lands owners should be compensated through a system of purchase, leasing, easements, or other economic incentives.

Safe harbor agreements should be formally authorized. Section 10(j) of the ESA should be clarified by including the "open-minded" Safe Harbor concept for application in a mixed land status of federal, state, tribal and private

properties. The use of Safe Harbor on private ranch lands is severely compromised by the fact that Safe Harbor is inapplicable on federal lands. How can the rancher who ranches on both deeded and permitted land be encouraged to "protect" a species that moves from one habitat to the other?

Following the above thoughts, the ESA would be refocused on saving species, not habitats. Habitat protection for a species would be highly specific and not painted with a broad brush. We would then be free to look at large areas in a broader, more ecologically inclusive context. Watersheds, for instance, are of immeasurable importance in sustaining much that adds critical value to our lives.

Therefore we recommend that Congress, in addition to amending the Endangered Species Act of 1973, write a new "Habitat and Landscape Law."

The Peregrine Fund, an organization that has been deeply involved on the ground in endangered species reintroduction, has also wrestled with the imperfections in the act that have emerged over time. We are fully prepared to participate in the work to be done.