

Digest of Federal Resource Laws of Interest to the U.S. Fish and Wildlife Service

Endangered Species Act of 1973

[Endangered Species Act of 1973](#) ([16 U.S.C. 1531-1544](#), 87 Stat. 884), as amended -- Public Law 93-205, approved December 28, 1973, repealed the Endangered Species Conservation Act of December 5, 1969 (P.L. 91-135, 83 Stat. 275). The 1969 Act had amended the Endangered Species Preservation Act of October 15, 1966 (P.L. 89-669, 80 Stat. 926).

The 1973 Act implemented the Convention on International Trade in Endangered Species of Wild Fauna and Flora (T.I.A.S. 8249), signed by the United States on March 3, 1973, and the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (50 Stat. 1354), signed by the United States on October 12, 1940.

Through federal action and by encouraging the establishment of state programs, the 1973 Endangered Species Act provided for the conservation of ecosystems upon which threatened and endangered species of fish, wildlife, and plants depend. The Act:

- authorizes the determination and listing of species as endangered and threatened;
- prohibits unauthorized taking, possession, sale, and transport of endangered species;
- provides authority to acquire land for the conservation of listed species, using land and water conservation funds;
- authorizes establishment of cooperative agreements and grants-in-aid to States that establish and maintain active and adequate programs for endangered and threatened wildlife and plants;
- authorizes the assessment of civil and criminal penalties for violating the Act or regulations; and
- authorizes the payment of rewards to anyone furnishing information leading to arrest and conviction for any violation of the Act or any regulation issued thereunder.

Section 7 of the Endangered Species Act requires Federal agencies to insure that any action authorized, funded or carried out by them is not likely to jeopardize the continued existence of listed species or modify their critical habitat.

Public Law 94-325, approved June 30, 1976, (90 Stat. 724) extended and increased the authorization of appropriations in section 15 of the 1973 Act.

Public Law 94-359, approved July 12, 1976, (90 Stat. 911), exempted from the prohibitions in the Act and under certain conditions, whale parts and products lawfully held prior to December 28, 1973. It also provided other amendments to facilitate administrative processes in emergency situations, clarified enforcement procedures, allowed disposal of forfeited and abandoned property, and clarified the definition of "commercial activity."

The authorization of appropriations for Federal grants-in-aid to States was extended by P.L. 95-212, December 19, 1977 (91 Stat. 1493).

Public Law 95-632, signed by the President on November 10, 1978, (92 Stat. 375) extended through March 31, 1980, the appropriations authority under section 15 and made extensive revisions to the 1973 law. A Cabinet-level Endangered Species Committee was established as part of a two-tiered process whereby Federal agencies may obtain exemptions from the requirements of section 7. The Tellico Dam project in Tennessee and the Grayrocks project in Wyoming were to receive expedited consideration by the Committee.

The Secretary of Defense is authorized to specify exemptions from the Act for reasons of national security. The consultation process under section 7 was formalized and strengthened, and now includes the requirement that Federal agencies prepare biological assessments in cases where the Secretary of the Interior has advised that a listed species may be present.

The 1978 amendments also oblige the Secretary to consider the economic impact of designating critical habitat, and to review the list of endangered and threatened species every five years. Public notification and hearing requirements, prior to the listing of a species or its habitat, are specified.

Other changes made by the 1978 statute include: a provision for cooperative agreements with States for the conservation of endangered and threatened species of plants, exemptions from the Act's requirements for the progeny of legally held captive raptors and antique articles made before 1830, revision of the penalty provisions of the Act, and a change in the definition of "species" to limit the application of the term "population" to include vertebrates only.

Public Law 96-69 ([40 U.S.C. 174\(b\)-1](#) and [43 U.S.C. 377a](#)), the Energy and Water Development Appropriations Act for fiscal year 1980, approved September 25, 1979, (93 Stat. 437) exempted Tellico Dam in Tennessee from the Endangered Species Act and authorized completion of the project despite the threat to the endangered snail darter. Additional amendments were enacted in P.L. 96-246, May 23, 1980 (94 Stat. 348) and P.L. 97-79, November 16, 1981 (96 Stat. 1079).

Public Law 96-159 ([16 U.S.C. 1533](#), 93 Stat. 1255-1230), approved December 28, 1979, extended and increased the authorization of appropriations through September

30, 1982. It designated the Secretary of the Interior, acting through the Fish and Wildlife Service, as the Endangered Scientific Authority for implementation of CITES. It also created an International Convention Advisory Commission, and extended the scrimshaw amendments for three years.

Public Law 97-304, approved October 13, 1982, (96 Stat. 1411-1417, 1421, 1422, 1425) extended the annual authorizations under the Act through FY 1985 at the following levels: section 15 (general) -- \$27 million; section 6 (grants-in-aid) -- \$6 million; section 7 (Exemption Committee) -- \$600,000. It also extended the Secretary's authority and overturned the "bobcat" decision of the U.S. Court of Appeals for the District of Columbia.

Public Law 98-327, approved June 25, 1984, (98 Stat. 270) authorizes the Secretary to use money from fines and forfeitures collected under the Lacey Act and the Endangered Species Act to pay for the temporary care of animals and plants seized by our law enforcement agents.

Public Law 98-364, July 17, 1984, (98 Stat. 442), as amended, clarified provisions concerning marine mammals (see Marine Mammal Protection Act of 1972) and provided for the translocation of California sea otters.

Public Law 99-625, approved November 7, 1986, (100 Stat. 3502) authorized the Secretary of the Interior to develop and implement a sea otter translocation plan, to be administered by the Fish and Wildlife Service, specifying statistics of sea otters to be translocated, manner of capture, relocation zone, and measures to contain the population. The 1986 amendments declared that a member of an experimental population shall be treated as "threatened" and provided that section 7 of the Endangered Species Act applies. The amendments also provided for non-defense agency actions in the translocation zone, and for incidental take in the management zone. (See Wetlands Loan Act.)

Although the funding authority for the Act lapsed for Fiscal Years 1986 through 1988, the Senate Appropriations Committee reports (S.