

Principles for Reforming the Endangered Species Act

1 The Endangered Species Act (ESA) was enacted in 1973 to prevent wildlife, fish, and plant species from
2 becoming extinct and to support their recovery until the protections under the law are no longer required.
3 When proposing to construct electric infrastructure, APPA members must consider whether ESA listed
4 species and designated critical habitat are present in the project area and, if so, what procedural steps and
5 substantive measures are necessary to comply with the requirements of the ESA. While the ESA serves
6 important conservation goals, ambiguous definitions and complex regulatory processes have increased
7 both the time and cost required for public power utilities to complete infrastructure projects.

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9 The United States Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) are
10 the primary federal agencies responsible for listing species, designating critical habitats, developing
11 recovery plans, conducting consultation with federal agencies to ensure that federal actions are not likely
12 to jeopardize the continued existence of listed species or adversely modify their critical habitat, and
13 issuing permits authorizing the incidental take of listed species.

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15 An individual or organization may petition FWS or NMFS to list a species for protection under the ESA.
16 Within 90 days of receiving the application, the lead agency must determine whether there is sufficient
17 information indicating that the petitioned action may be warranted, which would include an examination
18 of the environmental baseline to evaluate impacts of the proposed action. If so, within 12 months of
19 receipt of the petition, the lead agency must conduct a status review of the species and, if it determines
20 that listing is warranted, publish a proposed rule in the *Federal Register* for public comment. Within one
21 year of the proposed rule, unless extended, the lead agency will publish a final rule either listing the
22 species under the ESA or withdrawing the proposal.

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24 Once listed, the lead agency will monitor and report on the listing at least every five years, and if a
25 species no longer meets the definition of endangered or threatened, it can be delisted. Recovery plans,
26 including habitat restoration, population monitoring, and reintroduction efforts, help inform measures that
27 can be taken to help achieve species delisting.

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29 The listing of a species also requires the lead agency to identify areas of habitat for the species that are
30 designated as critical habitat, to the extent prudent and determinable. Critical habitat can include areas
31 that are occupied or unoccupied by the species depending on whether there are certain features or areas
32 that are essential for species conservation.

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34 When a project requires a federal permit, authorization, or funding, and it may affect a listed species or
35 critical habitat, the federal agency is required to conduct informal or formal consultation with FWS or
36 NMFS to ensure that it doesn't jeopardize the species or adversely modify critical habitat. To avoid
37 jeopardy or adverse modification, FWS or NMFS can provide a reasonable and prudent alternative that
38 involves modifications to the project that may be significant. FWS or NMFS can also authorize the
39 incidental take of species and require the implementation of reasonable and prudent measures that
40 minimize the impact of the taking. Under existing regulations, which are currently proposed for revision,
41 FWS or NMFS can also impose mitigation measures to offset the impacts of the project on listed species.

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43 Over the course of various administrations, the ESA regulatory framework has been revised significantly
44 and repeatedly. For example, the definition of "habitat," the procedures for designating critical habitat,
45 and the consultation process have all experienced changes, leading to regulatory uncertainty and concerns
46 about maintenance and upgrades to existing facilities. Shifting requirements for projects that affect listed
47 species make it difficult for public power utilities planning to build or upgrade facilities to meet rising
48 electricity demand. Differing permit approval timelines and deadlines from those of other federal
49 programs are a significant burden for project applicants navigating the requirements under the ESA, in
50 addition to other environmental statutes. Aligning permitting timelines and deadlines under the National
51 Environmental Policy Act for Environmental Assessments and Environmental Impact Statements would
52 enable applicants to focus on project development instead of meeting multiple misaligned deadlines.

53
54 The ESA process, like other federal infrastructure permitting processes, is full of delays and disputes that
55 lengthen project timelines. Deadlines for consultations under ESA section 7, permitting under ESA
56 section 10, and compliance with section 106 of the National Historic Preservation Act should be aligned
57 with environmental reviews and documents produced under the National Environmental Protection Act.
58 The scope of ESA reviews and consultations must also be narrowed to match the U.S. Supreme Court's
59 decision in *Seven County Infrastructure Coalition, et al. v. Eagle County, Colorado, et al.*, 605 U.S. 168
60 (2025), which limits federal environmental reviews to the proximate effects of a proposed action. Additionally,
61 Federal agencies should be required to implement a dispute and appeals process that handles issues with
62 permitting decisions in a timely and coordinated fashion.

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64 **NOW, THEREFORE, LET IT BE RESOLVED:** That the American Public Power Association (APPA)
65 believes it is important to identify and enact improvements that support the recovery of threatened and
66 endangered fish, plant, and wildlife populations while ensuring responsible land, resource, and water

67 management through actions such as voluntarily creating and supporting healthy habitats and working
68 cooperatively with public and private partners at the local, state, and federal levels; and

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70 **BE IT FURTHER RESOLVED:** That APPA supports a consistent and clear regulatory definition of the
71 term “habitat” that only encompasses areas that are actually habitable for a listed species at the time of the
72 critical habitat designation. At the time of designation, a habitat should exhibit physical or biological
73 features that can support one or more life stages and ultimately, the conservation of the protected species;
74 and

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76 **BE IT FURTHER RESOLVED:** That APPA supports revising the definition of the environmental
77 baseline for section 7 consultations to clearly establish that effects from ongoing actions and existing
78 structures are considered as part of the baseline; and

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80 **BE IT FURTHER RESOLVED:** That APPA supports preventing the Fish and Wildlife Service and
81 National Marine Fisheries Service from requiring federal agencies or project applicants to fully mitigate
82 or offset impacts to listed species caused by their actions; and

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84 **BE IT FURTHER RESOLVED:** That APPA supports aligning deadlines for Endangered Species Act
85 section 7 consultations, section 10 permits, and National Historic Preservation Act section 106
86 compliance with the deadlines listed for environmental assessments and environmental impact statements
87 completed during the National Environmental Policy Act permitting process, timely and coordinated
88 dispute and appeals process, and narrowing the scope of consultations and reviews for consistency
89 with the recent U.S. Supreme Court decision in the *Seven Country Infrastructure Coalition*
90 case.

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