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The Endangered Species Act Gets Some New Scientific Armor

The Fish and Wildlife Service has been criticized for letting politics influence Endangered Species Act decisions. Improved agency guidelines will help remedy the problem.

By Jimmy Tobias



(Photo: Frederick Florin/AFP/Getty Images)

The United States Fish and Wildlife Service takes a lot of flak—from industrial interests trying to prevent endangered species listings, from state governments resisting federal jurisdiction, from conservation groups seeking stronger wildlife protections. Right-wing politicians are after it too, obsessively trying to undermine the agency and the laws that guide it. During the 114th Congress alone, Republicans have introduced more than 100 bills and legislative maneuvers meant to erode the scientific integrity of the Endangered Species Act. If conservation is an arena of bare-knuckle boxing, the Fish and Wildlife Service is forever the pummeled fighter.

Scientists and wildlife advocates are increasingly concerned that this unstinting political pressure influences any FWS decisions around the ESA. And they *should* be worried. Some of the agency's recent actions—like determining not to protect wolverines—have been scientifically suspect and tainted by political tampering.

This spring, more than 900 scientists sent a letter to the Departments of the Interior and Commerce requesting that they introduce more accountability and transparency to ESA management. Among other things, the petitioners asked that listing and delisting decisions—the processes by which animals gain or lose federal protection—“be developed with external review by independent scientific experts.” ESA determinations, the scientists proposed, should only go forward after the agencies “make public the independent recommendations of the scientific community, based on the best available science.”

The FWS seems to have heard its critics. In an updated guidance released earlier this month, the agency took strides to improve its handling of endangered species science and insulate itself from political influence. It announced that it would consistently seek outside scientific input from three or more “objective and independent reviewers” when making future ESA determinations. And, crucially, it will make those independent

recommendations available for public scrutiny. Though this upgrade isn't perfect, those who have worked to defend the ESA's integrity should be pleased. Thanks to their efforts and initiative from the FWS, one of our most consequential conservation laws has stronger scientific armor. Wildlife everywhere will benefit.

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The FWS's new guidance has three key components, each one introducing a layer of independence and neutrality to the application of the ESA:

1. The agency is giving outside experts a more consistent voice in its ESA determinations. According to the guidance, the FWS will regularly rely on independent scientists with relevant expertise to evaluate and review the data that the agency uses when making crucial decisions. Scientists outside the agency will weigh in on whether the FWS's implementation of the ESA is based on the best available science, as required by law. These expert opinions will be available for public perusal, and will help introduce a uniform measure of accountability to the agency's actions.
2. The agency is working to eradicate conflicts of interest. Each independent reviewer contracted by the FWS will now be *required* to submit a financial conflict of interest. The forms will be made available to the public and will help ensure that the outside experts conduct their duties in an unprejudiced manner.
3. The agency is trying to prevent internal bias. The guidance prohibits the FWS's field offices from conducting in-house peer review of their *own* scientific findings. In particularly controversial or complex

decisions, moreover, the agency will contract an outside organization to conduct the scientific review process on its behalf.

According to the Union of Concerned Scientists' Gretchen Goldman, who has been following this complex issue closely, the new FWS guidelines are meant to ensure that *science alone* is the driving force behind ESA implementation.

“Getting this down in writing is a crucial step and I am glad to see them take it,” she says. “It should standardize agency practices, which is key going into the next administration when there will be a change in leadership and potentially different political priorities.”

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The FWS says the improved policy is part of a much broader effort to make the ESA work better.

“We are revising our whole internal process,” says Douglas Krofta, an FWS policy expert and branch chief. “We are going through all of our policies and guidance documents to see what we need to clarify, update, or change. This is a big initiative to improve the implementation of the Endangered Species Act.”

Of course, the new guidance still leaves room for refinement. Adrian Treves, a University of Wisconsin–Madison professor who helped spearhead the May letter to the Department of the Interior, worries that the guidance doesn't quite reflect the vision of wildlife conservation contained in the ESA. The law requires a five-factor analysis when making listing and delisting decisions, including consideration of the species' range conditions, its vulnerability to disease and predation, and the “man-made factors” that

affect its continued existence. Treves says the agency failed to emphasize that five-factor analysis in its updated policy, which could leave outside reviewers ill-equipped to adequately perform their duties.

“If the agency’s peer review policies don’t reiterate and emphasize the Endangered Species Act itself, you may get mission creep,” he says. “The guidance is still a little vague, which could create vulnerabilities to political pressure.”

There’s still work to do, but science-based wildlife management wins a significant victory nevertheless. For those who want to prevent the political corruption of the ESA, the FWS’s actions are a welcome, if wonky, reason to smile.
