



Reversing Trump's rules not enough to prevent extinctions

BY ROBERT L. FISCHMAN, OPINION CONTRIBUTOR — 06/23/21 04:30 PM EDT
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The [Endangered Species Act \(ESA\)](#) is a polarizing statute that imposes seemingly uncompromising mandates. It strictly prohibits activities that degrade habitat in a way that significantly impairs the ability of protected animals to survive and thrive. The ESA mandates appear inflexible, impeding collaboration between and among regulators and stakeholders.

Yet, contrary to this conventional wisdom, a [newly published analysis](#) shows that ESA implementation embraces conservation collaborations. Rather than simply applying or waiving prohibitions on habitat-impairing actions, many ESA rules incorporate public-private plans or best-management practices that focus on the key threats to species at greatest risk of extinction.

All the animals listed under the law because of climate change are subject to special rules that allow federal agencies to tailor protections. This flexibility prompts land managers to work together with federal agencies, crafting restrictions that reward conservation and limit draconian penalties to the most serious harms.

For instance, it would be practically impossible to detect harm from agricultural activities, such as plowing, to California's Mazama pocket gophers nestled in their burrows. But a [tailored rule](#) shields from liability any "accepted agricultural or horticultural (farming) practices" as long as soil disturbance does not penetrate deeper than a foot. That provides a clear standard for both farmers and regulators to track and allows agricultural activities to coexist with species recovery.

Early this month, the Department of the Interior (DOI) [announced plans to roll back](#) many Trump-era rules designed to hamstring implementation of the ESA. One of those rules eliminated private liability for harming certain species, especially those threatened by climate change. The Biden administration is right to reverse this rule. But I worry that DOI will declare victory without building on past successes.

Some tailored rules veer too far in accommodating industry interests and fail to contribute to species conservation. But others improve the prospects for species recovery because they limit the worst harms and generate habitat enhancement. The DOI must avoid the former and pursue the latter.

The Biden administration should also commit to leveraging the ESA's restrictions and requirements to create room for collaboration with people whose lives are disrupted by species listings. This can turn a clumsy law focused on difficult-to-detect consequences into one that insists on best practices adapted to particular circumstances in specific places. Among approaches that can work are:

- Rewarding with liability shields those who conserved habitat before listing triggered the ESA's prohibitions
- Encouraging prospective, good-faith collaborations to promote more habitat conservation
- Clearly laying out what will be required for a collaborative, tailored rule to make net contributions to species recovery
- Working closely with states so that land-use plans reflect species conservation goals
- Recalibrating collaborations in response to how well species respond to anticipated recovery and harm-reducing tactics

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- Actively enforcing tailored restrictions to prevent free riders from benefiting without contributing to collaborative species recovery

The DOI should resist the temptation to celebrate the end of the Trump era as a panacea for biological conservation. Careful science, difficult trade-offs and hard negotiations lie ahead. Rescuing animals on the brink of extinction requires species-by-species considerations and collaboration on the ground, where habitat recovery will shape the natural legacy we leave to future generations.

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