

The Washington Post

Opinions

# The world's strongest conservation law is under attack. It needs to be fixed instead.

By Peter S. Alagona and James Salzman November 16

*Peter S. Alagona is an associate professor of history, geography and environmental studies at the University of California at Santa Barbara.*

*James Salzman is the Donald Bren Distinguished Professor of Environmental Law with joint appointments at the UCLA School of Law and at the Bren School of the Environment at UCSB.*

The strongest conservation law enacted by any country, the Endangered Species Act, is under attack. Again.

Over the past three decades, bills in every Congress have sought to weaken the act, undermining a crucial law that most Americans support. The 44-year-old law needs reform, but not like this.

Passed with nearly unanimous bipartisan support and signed by President Richard Nixon in 1973, the Endangered Species Act is not just a law; it is a moral pledge to protect plant and animal species from going extinct. The law mandated use of the best available science, making clear that political and economic factors should not determine which species to protect.

This consensus did not last long. The new law had teeth. To the surprise of

many, it stopped the development of a Tennessee dam in 1978 that would have wiped out a local fish. Since then, critics have denounced it as federal overreach and a threat to property rights. Supporters counter that these complaints are overstated. The act works. Since its passage, only 10 of the Endangered Species Act's more than 1,600 protected species have gone extinct despite a tripling of gross domestic product and a population increase of more than 100 million people in the United States.

Rather than seeing the measure for what it is — a product of its time with strengths and weaknesses — it has become a polarizing issue in American politics. You're either for it or against it. Past bills targeting the Endangered Species Act have failed due to Democratic pushback and public disapproval, but this year, with a Republican Congress and White House, may be different.

Five bills, four of which have been around in one form or another since the Reagan era, threaten to weaken the law. To look at just two, Rep. Pete Olson's (R-Tex.) bill would prevent listing threatened species if doing so would cause significant economic effects. This would change the very purpose of the law. The Endangered Species Act would become the Endangered *Innocuous* Species Act. Rep. Dan Newhouse's (R-Wash.) bill would require that federal agencies use scientific data submitted by state, tribal or county governments in its listing decisions, even if it is biased or inaccurate.

These proposed amendments would make it more difficult to add species for protection, stalling conservation efforts. More important, neither these nor the other bills would make the law more efficient or effective.

So what kind of reforms would actually improve the Endangered Species Act and further its moral mandate? As a starting place, follow the money.

As any student of economics knows, incentives matter. The fundamental political problem with the act is that its incentives don't match its ethics.

Conserving endangered species benefits everyone in society, but a small number of people bear the cost — usually the landowners whose property use could be restricted if a protected species turns up.

Having an endangered species on one's land can too often be seen as a burden. Roughly 90 percent of endangered species may be found on private lands, so this is not a small issue. Reforms should focus first and foremost on shifting the perception of endangered species as a liability into a potential asset.

Tax incentives and subsidies are available in many areas of conservation. Forty million acres are protected under conservation easements, many encouraged by tax deductions. Farmers and ranchers accept billions of dollars for habitat protection and restoration. The farm bill's Working Lands for Wildlife program, for example, supports species conservation on almost 7 million acres, but we don't usually think of the Endangered Species Act through this prism. **Why not shift funds or provide deductions for landowners who successfully enhance and maintain their habitat for endangered species?** This would be far more targeted than traditional subsidies.

Since the 1990s, the government has developed creative programs that reduce the cost of complying with the law by giving landowners more flexibility. Millions of acres have been enrolled in conservation plans that protect habitat in some areas while allowing development in others, in markets that reward entrepreneurs who create species habitat to offset losses elsewhere and in proactive efforts to prevent species from getting listed in the first place. None of these was envisioned in the original law. Each has flaws. **But these and other programs suggest a practical path forward. Why not revise the Endangered Species Act to encourage more such programs that allow firms and individuals to take the lead in advancing conservation?**

Reform is not a binary choice between weakening the law or keeping the status quo. There is a better path.

**Read more here:**

[George F. Will: Federal agency creeps toward controlling . . . spiders?](#)

[Christine Todd Whitman: Don't walk back environmental progress](#)

[Chelsea Henderson: Trump may be mean, but he's not green](#)

 **6 Comments**