

**“For over 45 years, the ESA has failed at species conservation, while simultaneously trampling on property rights. It is way past time for Congress to fix this law. Reforming the law isn’t the same thing as gutting species protection. In fact, it is quite the opposite. Reforming the ESA is the only way this country will start to conserve species as Congress had envisioned a half-century ago,”** Daren Bakst, Senior Research Fellow, The Heritage Foundation.

9/24/19 Statement of Daren Bakst, Senior Research Fellow, The Heritage Foundation

Thank you for the opportunity to participate in today’s important ESA roundtable.

My name is Daren Bakst and I am a Senior Research Fellow at the Heritage Foundation. The views expressed today are my own and should not be construed as representing any official position of The Heritage Foundation.

In 1973, the Endangered Species Act (ESA) was enacted into law to promote the conservation of species. Unfortunately, the law has failed.

Throughout the law’s history, only about 3 percent of listed species have been delisted due to recovery.

That’s unacceptable.

There are important reasons to protect endangered species, but this shouldn’t be confused with feeling compelled to protect the Endangered Species Act.

After 45 years, it shouldn’t be surprising that lessons have been learned regarding how to modernize and improve the statute. Those lessons should be applied, not rejected in order to save every word of a flawed statute.

It’s not merely the underlying statute that is a problem. It’s also how the law has been implemented.

Let me provide just one example.

In 2012, the U.S. Fish and Wildlife Service determined that 1,544 acres of land in Louisiana was “critical habitat” for an endangered species known as the dusky gopher frog.

As a result of this designation, the federal government was considering a ban on the development of the property, depriving the private property owners of [\\$33.9 million](#).

The dusky gopher frog had not been seen in Louisiana in over 50 years.

The frog couldn't even survive on the property. The only way the area could support the frog was if the property owners made major and costly changes to the property—changes they had no inclination to make nor could they have been forced to make.

As the Pacific Legal Foundation's Mark Miller, who represented the property owners, recently stated, "The feds may as well have labeled this Louisiana property critical habitat for a polar bear. It would have done just as much good."

What was the point of this effort?

It didn't serve the interests of the dusky gopher frog.

There were plenty of losers in this effort though, including the property owners. Plus, other threatened and endangered species lost out. The federal government diverted resources that could have been better spent elsewhere.

I use this example because it highlights two central problems:

- 1) The ESA doesn't focus resources where they can be most effective; and
- 2) The law attacks property owners when the best approach would be to recognize that property owners are integral in conserving species.

I'd like to close out with a big picture principle that should guide ESA reform:

Society has decided that species protection is important. Therefore, the cost of that protection should be borne by society as a whole, not on private property owners who bear most of these costs.

This country can, and should, do much better in conserving species.

It definitely should do better in respecting the property rights of Americans.

### Select Excerpts from Recent Testimony

#### **Bakst Congressional Testimony, February 14, 2018**

<https://www.heritage.org/testimony/the-state-the-nations-water-and-power-infrastructure>

1) “Through the ESA, there have been efforts to restrict the use of land for infrastructure projects. According to a 2014 New York Times article, ‘Already, federal officials have delayed, altered or denied permits for more than two dozen energy projects in the West because of the bird [sage grouse].’”<sup>1</sup>

2) “In February, 2017 Senator John Barrasso (R-WY) provided an excellent summary of the law’s failure:

Of 1,652 species of animals and plants in the U.S. listed as either endangered or threatened since the law was passed in 1973, only 47 species have been delisted due to recovery of the species...

“As a doctor, if I admit 100 patients to the hospital and only 3 recover enough under my treatment to be discharged, I would deserve to lose my medical license.”<sup>2</sup>

3) “The ESA’s harmful impact has certainly been felt in the west. For example, in testimony before this subcommittee, the Family Farm Alliance explained:

In 2009 (and in 2014, 2015 and 2106), irrigation delivery restrictions – based in large part on ESA biological opinions for fishery species managed by either FWS or NMFS in the Delta – were a primary cause for the water cutbacks and rationing afflicting a multitude of communities throughout the state and the resulting economic devastation in the San

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<sup>1</sup> <https://www.nytimes.com/2014/07/20/business/energy-environment/disparate-interests-unite-to-protect-greater-sage-grouse.html>

<sup>2</sup> <https://www.epw.senate.gov/public/index.cfm/2017/2/chairman-barrasso-the-endangered-species-act>

Joaquin Valley. In California in 2016 alone, 21,000 jobs were lost, equating to a \$2.7 billion hit to economic activity. Over 540,000 acres of farmland were fallowed, and \$2 billion in direct farm losses were realized.”<sup>3</sup>

4) “In recent testimony before the Senate Committee on the Environment and Public Works, the National Association of Counties highlighted a long ESA delay of a major water project:

In Richland County, Montana, with a population of 11,960, agriculture is the county’s economic backbone, contributing \$926.5 million to the economy in 2016. The county’s irrigation district, which provides water to agricultural users in the county, partnered with the Corps and the Bureau of Reclamation (Reclamation) on the Lower Yellowstone Project, which was authorized in WRDA 2007 for ecosystem restoration. Due to concerns over the pallid sturgeon’s habitat, a species of fish protected under the ESA, several environmental groups sued. Though it took almost ten years, this case was recently resolved and the project will move forward this spring.”<sup>4</sup>

#### Recent Resources

- “This ‘Endangered Species Act Case Finally Ended in Defeat for the Government’  
Daren Bakst, Daily Signal, June 10, 2019  
<https://www.heritage.org/environment/commentary/endangered-species-case-finally-ended-defeat-the-government>
- "3 Ways Trump's New Regulations Will Better Protect Endangered Species"  
Daren Bakst, Daily Signal, August 13, 2019  
<https://www.heritage.org/environment/commentary/3-ways-trumps-new-regulations-will-better-protect-endangered-species>
- “Endangered Species Act Regulations: New and Improved?”  
Jonathan Wood and Daren Bakst, Federalist Society Teleforum/Podcast, August 20, 2019  
<https://fedsoc.org/events/the-endangered-species-act-new-and-improved>
- “Correcting Falsely “Recovered” and Wrongly Listed Species and Increasing Accountability and Transparency in the Endangered Species Program”  
Robert Gordon, Heritage Foundation Backgrounder, April 16, 2018  
<https://www.heritage.org/environment/report/correcting-falsely-recovered-and-wrongly-listed-species-and-increasing>

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<sup>3</sup> [https://republicans-naturalresources.house.gov/uploadedfiles/testimony\\_keppen2.pdf](https://republicans-naturalresources.house.gov/uploadedfiles/testimony_keppen2.pdf)

<sup>4</sup> [https://www.epw.senate.gov/public/\\_cache/files/2/c/2ccea3c-97b9-4dad-81f5-2fd3de1841c3/E00EF20BC1503ED107B7533A83AAD4AC.ufner-naco-testimony-01.10.2018.pdf](https://www.epw.senate.gov/public/_cache/files/2/c/2ccea3c-97b9-4dad-81f5-2fd3de1841c3/E00EF20BC1503ED107B7533A83AAD4AC.ufner-naco-testimony-01.10.2018.pdf)

