



# Update on the Endangered Species Act

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*National Waterways Conference  
2022 Legislative Summit  
April 26, 2022*

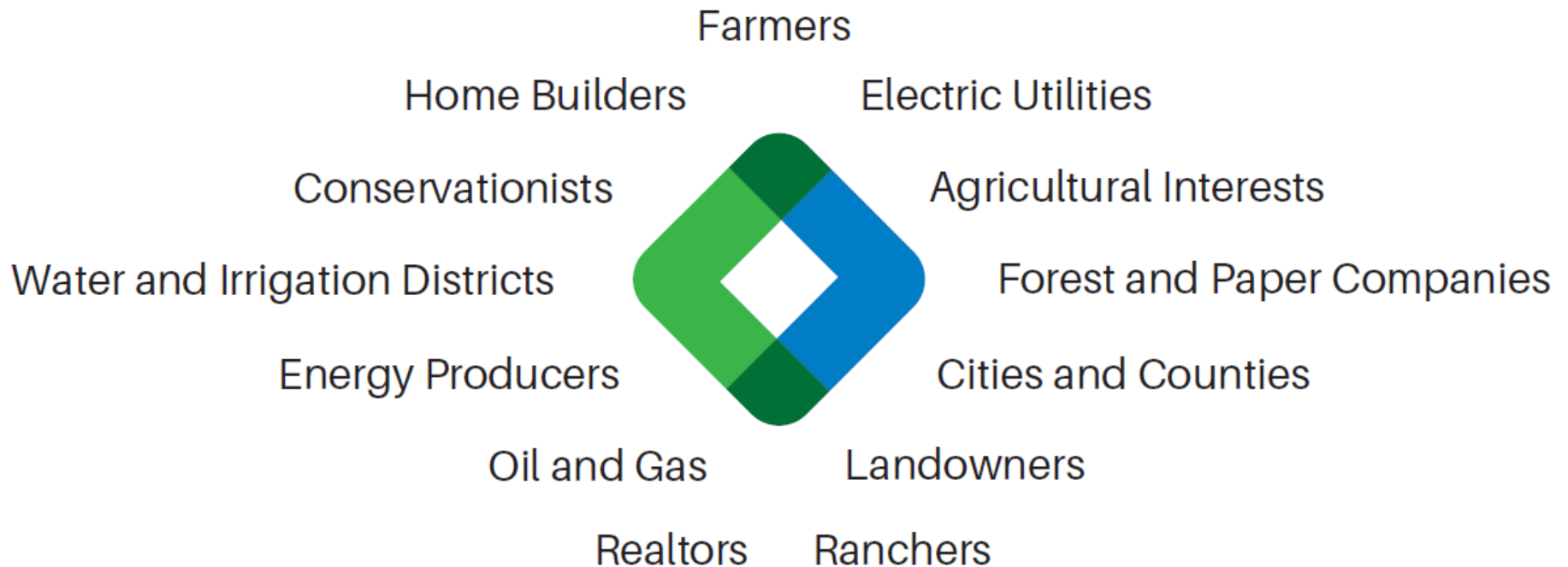
# About NESARC

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The National Endangered Species Act Reform Coalition (NESARC) and its members are committed to promoting effective and balanced legislative and regulatory improvements to the ESA and its implementation that support the protection of fish, wildlife and plant populations as well as responsible land, water and resource management.

# Diverse Membership...One Voice

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# NESARC Priorities

- ❖ Encourage voluntary conservation efforts
- ❖ Increase State and local involvement
- ❖ Ensure an open and sound decision making process
- ❖ Improve the critical habitat designation process
- ❖ Improve consultation procedures under Section 7
- ❖ Establish delisting criteria
- ❖ Strengthen Habitat Conservation Planning procedures/  
codify “No Surprises”
- ❖ Clarify the scope and application of Section 4(d) rules
- ❖ Implement petition litigation reforms



# Executive Branch Updates

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# Biden Administration Rollback of ESA Regulatory Improvements

**June 2021:** FWS/NMFS announced a plan to revise or rescind five ESA regulations finalized during the Trump Administration that “conflict with Biden-Harris Administration objectives. . . .”

- ❖ Definition of “Habitat” (Finalized December 2020)
  - ◆ **Rescission proposed October 2021 – At OIRA for final review**
- ❖ Critical Habitat 4(b)(2) Exclusions (Finalized December 2020)
  - ◆ **Rescission proposed October 2021 – At OIRA for final review**
- ❖ Improvements to ESA Section 4 (Finalized August 2019)
  - ◆ **Proposed revisions anticipated in 2022**
- ❖ Improvements to ESA Section 7 (Finalized in August 2019)
  - ◆ **Proposed revisions anticipated in 2022**
- ❖ Species specific 4(d) rules (Finalized in August 2019)
  - ◆ **Proposed rescission anticipated in 2022**



# Army Corps and NMFS Memo on “Existing Structures”



- ❖ January 2022 Memorandum addresses the USACE/NMFS process for evaluating the environmental effects of projects involving existing structures (such as docks, piers, or dams) on listed species and designated critical habitat in ESA Section 7 consultations.
- ❖ Takes a similar approach to a 2018 guidance, which was limited to the West Coast and was solely NMFS’s interpretation (rather than both NMFS and USACE).
- ❖ The Memorandum’s nationwide applicability has far reaching implications for private project owners.
- ❖ Remains to be seen whether USFWS (not a party to the Memorandum) will apply this same understanding of Section 7 consultation requirements for existing structures.
- ❖ NMFS/USACE approach may be further addressed in forthcoming ESA Section 7 regulatory revisions.
- ❖ Legislative response to Memorandum unlikely this year.

# Additional ESA Regulatory Actions

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- ❖ **Environmental Protection Agency (EPA):** April 2022 workplan outlines how the agency intends to meet its ESA obligations under its Pesticide Program.
- ❖ **Federal Emergency Management Agency (FEMA):** October 2021 Request for Information on the floodplain management standards under the National Flood Insurance Program.
  - ◆ FEMA interested in how to better implement the NFIP to address threatened and endangered species issues.



# Potential Future ESA Regulatory Actions

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## Fall 2021 Unified Agenda of Regulatory and Deregulatory Actions (Released December 2021)

- ❖ Compensatory mitigation mechanisms under the ESA
  - ◆ Several rules/policies under review at OIRA
- ❖ Revisions to the policy on interpretation of the phrase "Significant Portion of its Range"
- ❖ Revision of the regulations for experimental populations
- ❖ Enhancement of survival and incidental take permits under ESA Section 10
- ❖ Streamlining FWS permitting of rights-of-way

# Legislative Branch Updates

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# ESA Legislative Snapshot

- ❖ Conversations regarding ESA reform continue among legislative champions, particularly Republicans in the West
- ❖ Unlikely to see comprehensive ESA reform legislation advance this Congress
- ❖ Potential opportunities to pursue targeted ESA improvements through other vehicles
- ❖ Strategy will include pursuing opportunities **AND** mitigating risks
- ❖ Education of Congressional Members and staff
- ❖ Focus on legislative landscape after the mid-term elections



# Recovering America's Wildlife Act

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- ❖ Would provide an additional **\$1.4 billion** per year for states, territories and tribal entities for the implementation of state fish and wildlife agencies to conserve, restore and protect wildlife and habitats
- ❖ H.R. 2773 (Dingell and Fortenberry): 171 cosponsors (134 D; 37R)
  - ◆ Reported by Natural Resources Committee in January 2022
- ❖ S. 2372 (Heinrich and Blunt): 32 cosponsors (16R; 15D; 1 Ind.)
  - ◆ Reported by Senate Environment and Public Works Committee in April 2022
- ❖ Strong bipartisan support, but differences in bills and proposed “pay-fors” will require additional negotiation

# NESARC's 2022 Work Plan



- ❖ Pursue ESA policies consistent with NESARC priorities
- ❖ Engage with and educate lawmakers and Congressional staff
- ❖ Respond to ESA regulatory proposals from Biden Administration
- ❖ Coordinate with states and local officials on ESA matters to ensure a complimentary approach to ESA reform activities
- ❖ Activate a growing NESARC membership



For more information:

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