

## **Oveview of the Endangered Species Act of 1973**

The U.S. Endangered Species Act (ESA) is Federal legislation that aims to conserve the ecosystems upon which endangered and threatened species depend. President Richard Nixon signed ESA into law in December 1973. The ESA protects plant and animal species and is jointly administered by the U.S. Fish and Wildlife Service (Interior) and NOAA Fisheries (Commerce). Its aim is twofold: to provide protection for species that are in danger of extinction and to conserve the habitats on which those species depend.

**What is critical habitat?:** Critical habitat is a habitat area essential to the conservation of a listed species. Although the area does not need to actually be occupied by the species at the time it is designated. Critical habitat is a specific term and designation within the U.S. Endangered Species Act.

An area is designated as Critical Habitat (CH) after the proposed CH is published in the Federal Register and public comments received. The final boundaries of the CH area are also published in the Federal Register.

There is an effort that stems from conflicting Circuit Court decisions and the establishment of a new rule that took effect in October 2013. The approach is an incremental economic analysis method which means only the cost that are measured for critical habitat are the incidental costs of Federal agencies consulting with each other. This new rule concerning 374 species in 12 states in the south aims to include vast areas of public and private land as critical habitat. Arkansas has more than 38 more aquatic species.

**What it means for counties?:** Maintaining and building county roads and infrastructure within critical habitat areas would become more costly, time consuming and troublesome. In some cases, it could halt such development. Consultation with the U.S. Fish and Wildlife would be required in most cases and the opportunity for third-party litigation is ever present.

Other industries and private landowners would face increased restrictions and costs in consulting and also the possibility for third-party litigation.

**Current legislation addressing these rules:** Currently, H.R. 2098 (Common Sense in Species Protection Act of 2015) sponsored by Crawford, Womack, Westerman and Hill, would change the economic analysis process.