

The Challenge of Designing Recovery Plans for Endangered Species Losing Habitat as a Result of Climate Change

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This presentation will address the challenges global climate change presents for the Endangered Species Act (ESA) and its primary administrative agency, the U.S. Fish and Wildlife Service (FWS). Climate change will reshuffle ecological systems in ways that will defy easy prediction using existing knowledge and models, posing threats to species through primary and secondary ecological effects as well as the effects of human adaptation to climate change. Even assuming that a workable treaty regime can be established that will eventually result in a stable level of greenhouse gases, the climate will differ from the recent historical regime and many species will not survive the transition, regardless of human interventions using the ESA. Other species may survive with the assistance offered through a focused application of the ESA. In either case, FWS faces a daunting management task. It must decide which species it cannot save and, for those who may be able survive shifting climatic conditions, which species it should focus its scarce resources protecting. Drawing on relevant provisions of the ESA, the presentation will consider how FWS should think about this problem and the range of discretion at its disposal in making these decisions.

Relevant reading: J.B. Ruhl, *Climate Change And The Endangered Species Act: Building Bridges To The No-Analog Future*, 88 B.U.L. Rev. 1 (2008)