



Environment

Summary and Key Talking Points

Policy Proposals

1. Turn responsibility for environmental regulation and land management back to the states and the private sector.
2. Properly define the waters covered under the Clean Water Act to provide clarity and protection for property owners.
3. Improve the Endangered Species Act (ESA).
4. Require congressional approval for more stringent National Ambient Air Quality Standards.

Quick Facts

1. The federal government owns and manages 640 million acres of America's land—an area larger than California and Mexico combined.
2. The federal government has recovered and delisted less than 3 percent of the listed domestic species—an average of less than one per year—since 1973 when the ESA was enacted.
3. From 1980 to 2020, several air pollutants showed dramatic declines, including a 94 percent decline in sulfur dioxide and a 98 percent decrease in lead.

Power Phrases

A Clean Environment

- We all want a clean environment for ourselves and for future generations.

Local Stewardship

- Our land and resources are best cared for by the people closest to them—not by the federal government.
- The state of our air and water has improved dramatically over the past several decades through innovation and investment in new technologies.
- Meanwhile, federal management of national sites often leads to bureaucratic mismanagement and stagnation. Catastrophic wildfires and species overpopulation devastate national parks, while nuclear cleanup efforts go unaddressed.

The Issue

Americans, regardless of ideology, want a clean environment, but the path to achieving environmental objectives leads to disagreement. Some look to the federal government to promote command and control policies, but the best approach to environmental policy is to recognize the importance of private property rights, state and local innovation, and free markets.

Advocates of command and control invariably point to federal laws like the Clean Air Act as examples of success. The Clean Air Act has certainly played an important role in the notable improvements in air quality that have been realized over the past 40 years, but these improvements could have been accomplished at far less cost—both economic and social—had lawmakers foregone centralized government control in favor of the transformative power of market incentives and private property rights.

Touting the Clean Air Act as an example of the success of command and control also ignores other foundational environmental statutes from the 1970s that have failed miserably, including the Endangered Species Act. Innovation and investment in new technologies have caused the state of our air and water to improve by leaps and bounds over the past several decades. For policymakers, the question should not be what laws have done in the past, but whether these laws are sound policy for the future.

Federal environmental law is comprised of environmental statutes that are overly broad, unclear, or woefully outdated, failing to reflect current conditions. In addition, almost 50 years of agency implementation of these laws has led to government overreach that is inconsistent with the statutes themselves. The size and scope of the federal role in environmental management are now well beyond what was envisioned with these statutes even as the federal government has become increasingly unaccountable to the people and their representatives in Congress. Congress has delegated much of its power to set environmental policy to executive agencies, which exercise this power through standards, regulations, permitting requirements, and multi-decade management plans. Moreover, while Congress envisioned a cooperative role for states in many of these laws, that role has been eroded over time. Consequently, federal bureaucrats often function as economic planners and local zoning boards.

The result is sweeping decisions on nuanced issues and increasingly stringent standards that achieve marginal benefits at great cost. Often, these decisions are defended by scientific analyses that present an incomplete picture, are biased toward regulatory action, ignore evidence that contradicts regulatory agendas, and are inaccessible to the public. Regulators argue that they are merely “following the science,” but they are really making policy decisions that reflect their own value judgments.

Even in areas where most Americans would support some measure of continued federal management, current policies are problematic when divorced from principles of limited government, individual freedom, and free-market incentives. National parks are discouraged from employing innovative solutions to raise park revenue, address catastrophic wildfires, and manage invasive species and overpopulation of native species. Laws like the Endangered Species Act *disincentivize* solutions and partnerships with private property owners. And because of bureaucratic and legislative mismanagement, government nuclear weapons research and development sites that helped the U.S. win World War II and the Cold War remain what may well be America’s greatest unaddressed environmental liability.

The need to reform the nation’s environmental laws has never been greater. The foundational federal environmental statutes should be changed to apply the lessons learned over the past half-century. They should be modernized to reflect the current environment and to rein in the agency overreach that has expanded beyond the plain language of the statutes and the will of Congress. In general, to the extent that there is a federal role, it should be to ensure that environmental gains achieved over the years are not lost. The responsibilities *and* the rewards of environmental stewardship belong with property owners and the states, which are more knowledgeable about local conditions than are federal bureaucrats.

A true commitment to the environment means advancing policies that achieve measurable, positive outcomes. The best way to achieve these outcomes is by respecting American values of federalism, the rule of law, and economic freedom. Ultimately, policymakers should never lose sight of the fact that America's most important, unique, and precious natural resource is its people.

Recommendations

Devolve more responsibility for environmental regulation and federal lands management to the states and the private sector. Congress should allow state programs to function in place of federal leasing, permitting, management, and regulatory programs both to benefit from local knowledge and to free federal resources for issues that are more federal in nature. America benefits from experimentation and innovation that could be cultivated with a more decentralized approach. Some states would doubtless make mistakes in their management by being too restrictive or too lax, but such mistakes would provide lessons to guide future policy decisions and would have far less adverse impact on the nation than would be the case if the same mistakes were made by the federal government.

Prohibit the Environmental Protection Agency from abusing cost-benefit analysis to justify costly air regulations (ancillary or secondary benefits abuse). When the Environmental Protection Agency (EPA) issues a rule to reduce emissions of a certain air pollutant, the direct benefits of reducing those emissions should exceed the costs. However, for years, the EPA has made an end run around this common-sense requirement. Even when a rule's stated objective has massive costs and few to no benefits, the EPA points to the ancillary benefits (most often from reducing particulate matter) as justification for the rule. This overreliance on ancillary benefits allows the EPA to regulate an air pollutant without making the case that reducing emissions of that pollutant is warranted. This abuse has become so egregious that the EPA has issued major rules without quantifying whether there are benefits associated with their regulatory objectives, instead relying solely or primarily on ancillary benefits from reducing particulate matter.

Clean up facilities that are used to manufacture and test nuclear weapons. The facilities remaining from World War II and the Cold War that were used to manufacture and test nuclear weapons may be America's greatest remaining environmental liability. The U.S. Department of Energy is chiefly responsible for cleaning up these sites at an expected cost to the taxpayers of \$406 billion. Cleanup of these sites should not be treated as an everlasting jobs program. The federal government has a legal and moral obligation to clean up these sites, and this mission should receive the commensurate level of attention from Congress.

Define which waters are covered under the Clean Water Act. Congress should clarify in statute the regulatory reach of the Clean Water Act. The statute currently prohibits the discharge of pollutants into "navigable waters" without a federal permit. It further clarifies that "navigable waters" include "the waters of the United States, including the territorial seas." However, the EPA and the Army Corps of Engineers have failed to follow the plain language of the law and have tried to expand their regulatory reach by broadly defining "waters of the United States." They have also adopted subjective and vague definitions while inconsistently enforcing the law. Congress should define which waters are covered under the Clean Water Act, recognizing the important role that states play in regulating lakes, rivers, and streams. This definition should be narrow in scope and generally consistent with Justice Antonin Scalia's plurality opinion in *Rapanos v. United States* (2006).

Eliminate the Land and Water Conservation Fund. The Land and Water Conservation Fund (LWCF), established by Congress in 1965 and administered by the U.S. Department of the Interior, allows the federal government to use royalties from offshore energy development to buy private land and turn it into public parks and other public recreation areas. It is the primary vehicle for land purchases by the four major federal land-management agencies: the Forest Service, Bureau of Land Management, Fish and Wildlife Service, and National Park Service. Congress also uses the fund for a matching state grant program. The federal government cannot effectively manage the lands it already owns, and Congress should not enable further land acquisition.

Improve the Endangered Species Act. The Endangered Species Act (ESA) is failing to achieve its fundamental purpose—to protect endangered or threatened species—and this failure is exacerbated by the blocking of important projects and trampling of property rights. To improve the conservation of species under the ESA, Congress should codify the regulatory clarification (consistent with the statute) that threatened and endangered species are to be treated differently when it comes to Section 9’s take prohibition. The listing process should be a distinct process that is separate from whether any regulatory requirements should be triggered. States should be allowed to play a greater role in protecting species, in large part because they are closer than the federal government to any situation that needs to be addressed. Improvements in the ESA should ensure that its costs are borne by society, not by individual property owners.

Require that Congress make any changes in the National Ambient Air Quality Standards. The EPA regularly sets standards for six principal air pollutants: carbon monoxide, lead, nitrogen dioxide, ground-level ozone, particulate matter, and sulfur dioxide. Under the Clean Air Act, the EPA is required to review the standards every five years and make changes, if necessary, disregarding costs in the development of the standards. The EPA continues to develop stricter standards even as states and metropolitan areas have yet to meet older standards (for example, in the case of ground-level ozone). New standards are also becoming extremely expensive to meet while yielding smaller margins of tangible benefits; in fact, some standards are close to or at background levels. Congress should reconsider the mandatory review process. Congress, not the EPA, should make any decision to tighten standards, given the scope of their impact and the magnitude of success that has already been achieved in improving air quality.

Repeal or limit the scope of the National Environmental Policy Act. The National Environmental Policy Act (NEPA) is a 50-year-old procedural law that requires federal agencies to assess the potential environmental impacts of their actions, including permitting for infrastructure projects. NEPA has evolved to serve more as a tool by which to delay and obstruct projects that are unpopular with special-interest groups or politicians than as a way to assure the proper consideration of environmental impacts. Major problems contributing to NEPA delays include differing interpretations of NEPA requirements, nuisance litigation, failed interagency coordination, administrative bottlenecks, and outdated requirements that fail to take into account a dynamic environment.

Far from compromising environmental stewardship, repealing NEPA would provide an opportunity to remove duplication of state and federal environmental requirements. NEPA was America’s first major federal environmental law and was passed before the other numerous federal environmental statutes that now exist. It seems unlikely that NEPA would even be enacted today given that environmental issues are constantly being considered independently of NEPA through other federal environmental laws.

Short of NEPA’s full repeal, reforms should include narrowing the scope of review to include only major environmental issues, mandating time limits and requiring a lead agency on projects, eliminating analysis of greenhouse gas emissions from the review process, and allowing agencies to consider environmental impact analyses conducted under other federal statutes as the functional equivalent of a NEPA analyses.

Compensate property owners for regulatory takings. When the government seizes private property for a public use, it must provide just compensation to property owners. However, there is little to no protection for property owners when the government imposes regulations that restrict the use and enjoyment of property even if most of the property’s value has been lost. These restrictions on property use, while not a physical seizure of property, are still a taking of a specific use of the property. Compensation mechanisms should be created, either within individual federal environmental statutes or in broad-based legislation, to offset the costs borne by property owners because of federal environmental regulation. In addition to improving the protection of private property rights, this change would require agencies to be transparent with respect to the true costs of their regulations and to take those costs into account when establishing agency priorities.

Facts + Figures

FACT: The U.S. has made dramatic improvements in air quality, but the EPA has continued to use an ever-expanding authority to implement stringent regulations with increasingly high compliance costs and diminishing marginal environmental returns. The aggregate emissions of six common pollutants decreased by 73 percent from 1980 to 2020. During that same period:

- Gross domestic product increased by 173 percent,
- Vehicle miles traveled increased by 85 percent,
- Energy consumption increased by 19 percent, and
- The U.S. population increased by 46 percent.

From 1980 to 2020, the following decreases in pollutants were observed:

- Carbon monoxide (CO) decreased by 75 percent;
- Lead (Pb) decreased by 99 percent;
- Nitrogen dioxide (NO₂) decreased by 70 percent;
- Ozone (O₃) decreased by 33 percent;
- Fine particulate matter (PM_{2.5}) decreased by 44 percent (from 2000 to 2020); and
- Sulfur dioxide (SO₂) decreased by 93 percent.

FACT: The Endangered Species Act (ESA) was enacted in 1973 to promote the conservation of species. Unfortunately, the law has failed to achieve this goal.

- The federal government has recovered and delisted only about 3 percent of the species on the endangered species list in the nearly 50 years since the ESA became law.

FACT: Reducing the massive federal estate through privatization and by shifting ownership to states and counties would yield better economic and environmental results.

- The federal government owns and manages 640 million acres (28 percent) of the land in the United States—an area larger than California and Mexico combined.
- The federal government owns approximately 80 percent of Nevada, 63 percent of Utah, 61 percent of Alaska, 62 percent of Idaho, and 53 percent of Oregon.
- States earn more revenue per dollar spent than does the federal government on a wide range of economic activities such as timber, grazing, minerals, and recreation. According to a Property and Environmental Research Center report, the Forest Service and Bureau of Land Management lost \$4.38 per acre from 2009 to 2013 while trust lands in four western states earned \$34.60 per acre. Similarly, Idaho and Montana averaged \$6.86 per dollar spent on recreation on state trust lands, but federal lands realized a net loss.

Additional Resources

The Heritage Foundation, “Heritage Explains: The Right Way to Ensure a Cleaner Environment.”

Daren Bakst and Katie Tubb, “A Proactive Environmental Policy Agenda for Congress and the Administration,” Heritage Foundation *Backgrounder* No. 3555, November 2, 2020.

Diane Katz, “Curbing Abuses of a Politicized NEPA,” Heritage Foundation *Backgrounder* No. 3524, August 25, 2020.

Nicolas D. Loris and Katie Tubb, “Permanent Reauthorization of Land and Water Conservation Fund Opens Door to Permanent Land Grabs,” Heritage Foundation *Issue Brief* No. 4934, January 22, 2019.

Daren Bakst, Mark C. Rutzick, and Adam J. White, “Restoring Meaningful Limits to ‘Waters of the United States,’” Regulatory Transparency Project of the Federalist Society, September 26, 2017.

Daren Bakst, “Three Key Reforms for Federal Water Policy,” Heritage Foundation *Issue Brief* No. 4633, November 23, 2016.

Katie Tubb and Nicolas D. Loris, “The Federal Lands Freedom Act: Empowering States to Control Their Own Energy Futures,” Heritage Foundation *Backgrounder* No. 2992, February 18, 2015.

Robert Gordon, ed., and Diane Katz, assoc. ed., *Environmental Policy Guide: 167 Recommendations for Environmental Policy Reform* (Washington: The Heritage Foundation, 2015).

Jack Spencer, ed., *Environmental Conservation: Eight Principles of the American Conservation Ethic* (Washington: The Heritage Foundation, 2012).