



# The Endangered Species Act and Claims of Property Rights Takings

*Robert Meltz*

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The federal Endangered Species Act (ESA) has long been one of the major flash points in the "property rights" debate. This report first outlines the ESA provisions most relevant to the act's impacts on private property, and then surveys the major ESA-relevant principles of Fifth Amendment takings law. The report then proceeds to its core topic: the court decisions adjudicating whether government measures based on the ESA effect a taking of property under the Fifth Amendment. The cases address four kinds of ESA measures: (1) restrictions on land uses that might adversely affect species listed as endangered or threatened; (2) reductions in water delivery or allowable diversion to preserve lake levels or instream flows needed by listed fish; (3) restrictions on the defensive measures a property owner may take to protect his/her property from listed animals; and (4) restrictions on commercial dealings in members of listed species. To date, only one of the 15 ESA-based takings cases revealed by research has found a taking, and that decision has been undermined by a later decision of the same judge.

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