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A Case for Further Environmental Protections of Endangered Animals' Habitats and a Limitation of State Agency Power

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I. Introduction

Upon the enactment of the Endangered Species Act of 1973, American animal rights activists and advocates secured a huge victory for many introduced and indigenous animals that lived within the United States and earned them long-deserved dignities and protections.¹ The Act, referred to as the ESA, expanded the cognizant trend of previous Congressional Acts made in the 1960s which had addressed a growing public concern regarding animal rights, particularly through establishing protections for endangered animals.² Prior to the enactment of the ESA, Congress had passed the Endangered Species Preservation Act in 1966 which prohibited the ‘taking’ of federally recognized ‘endangered species.’³ Although these acts were substantial steps in the preservation movement—leading to the recognition and protection of threatened animals—and reflected a favorable public consensus towards extending humane protections to animals, they were not entirely comprehensive in their scope.⁴ These enactments were deficient in numerous regards with some of these deficiencies having been remedied by amendments to the ESA, but others still remain unaddressed.⁵

Initially, the ESA merely criminalized the taking, trading, or exchanging of federally recognized animal species. It was not until 1978 that the ESA was amended to extend protections to critical habitats used for the conservation of endangered species. Furthermore, in 1982, the ESA

¹ *Importance of the Endangered Species Act*. Endangered Species Coalition. (2020).
<https://www.endangered.org/importance-of-the-endangered-species-act/>

² *Endangered Species Act Milestones: Pre 1973*. U.S. Fish & Wildlife Service, FWS.gov
<https://www.fws.gov/node/266462>

³ *History of the Endangered Species Act*. Ballotpedia.
https://ballotpedia.org/History_of_the_Endangered_Species_Act

⁴ Bruskotter, J. & Vucetich, J. (2018, July 19). *Support for the U.S. Endangered Species Act over time and space: Controversial species do not weaken public support for protective legislation*. The Society for Conservation.
<https://conbio.onlinelibrary.wiley.com/doi/full/10.1111/conl.12595>

⁵ *History of the Endangered Species Act*. Ballotpedia.
https://ballotpedia.org/History_of_the_Endangered_Species_Act

was amended again to include protections for endangered plant life.⁶ After the 1978 and 1982 amendments, the essential components of an ecosystem were all given protection: it was now a criminal offense to harm the plants, the animals, or even the habitat upon which endangered species rely on.⁷ These changes were essential, as all the species present in each ecosystem are required to maintain its ecological balance; therefore, critical environments must continue to function properly to allow the recovery of threatened animals from those environments.⁸ “When a species becomes endangered, it is a sign that the ecosystem is slowly falling apart;” an imbalance of one species in an ecosystem will lead to a cascading effect, harming the populations of other species within that ecosystem.⁹ While the ESA has seen progressive amendments that have furthered the availability of protections to imperiled species, the ESA has also been amended in ways that have dampened these protections.¹⁰

Changes to the ESA have been fairly commonplace with presidential administrations cooperating with Congress to make amendments to the ESA to reach new political aims.¹¹ These changes often reflect the goals of the administration and provide varied results. For example, in 1976 the Tennessee Valley Authority—a state agency—faced a challenge to its construction and operation of a dam (“The Tellico Dam”) built on land where snail-darters, an endangered species, lived.¹² In Hill, the Court concluded that TVA’s construction on the site was in violation of the ESA and ordered that construction should be ceased immediately.¹³ Specifically, in ordering the

⁶ Id.

⁷ *Importance of the Endangered Species Act*. Endangered Species Coalition. (2020). <https://www.endangered.org/importance-of-the-endangered-species-act/>

⁸ Id.

⁹ Id.

¹⁰ *History of the Endangered Species Act*. Ballotpedia. https://ballotpedia.org/History_of_the_Endangered_Species_Act

¹¹ Id.

¹² Tennessee Valley Authority v. Hill, 437 U.S. 153 (1978)

¹³ Id.

construction to be halted, the Court reasoned, “it is clear that TVA's proposed operation of the dam [would eradicate] an endangered species.”¹⁴ Despite this guidance from the Court, Congress created an exemption for the Tellico Dam project in 1979 by adding a rider to an unrelated “energy and water appropriations” bill which was signed by President Jimmy Carter.¹⁵ The project was completed in 1979.¹⁶ Since then, the remaining population of snail-darters had to be removed from the area and relocated.¹⁷

In a similar vein, during the Trump administration the ESA stripped back protections for threatened species and allowed the Interior Department to consider economic feasibility in determining whether to undertake efforts to save an endangered species.¹⁸ These changes severely weakened the environmental protections that had become intertwined with the ESA.¹⁹ When economic factors are considered in determining an ecosystem critical for recovery, crucial ecosystems may be passed over for protection if the land could be used for an economically beneficial purpose.²⁰ The Trump administration seemingly viewed the ESA as a barrier to economic development in a manner all too reminiscent of the Carter Administration in handling the Tellico Dam.

¹⁴ *Id.*

¹⁵ Hornblower, M. (1979, September 26). *Carter Signs Bill Forcing Tellico Dam Completion*. The Washington Post. <https://www.washingtonpost.com/archive/politics/1979/09/26/carter-signs-bill-forcing-tellico-dam-completion/7e57e3c0-d186-4bcf-9930-842c07e21c81/>

¹⁶ Millsaps, T. (2009, November 30). *A Look Back: Closing the Tellico Dam Gates*. The Advocate & Democrat. https://www.advocateanddemocrat.com/news/article_1d20abdc-a6e6-5006-9931-389bbe40538e.html

¹⁷ Plater, Z. *Tiny Fish/Big Battle*, Tennessee Bar Journal 44, no. 4 (April 2008)

¹⁸ Newburger, E. (2022, July 5). *California federal judge throws out trump-era changes that weakened Endangered Species Act*. CNBC. <https://www.cnbc.com/2022/07/05/trump-era-changes-to-endangered-species-act-thrown-out-by-judge.html>

¹⁹ *Trump Administration Weakens Endangered Species Act Amidst Biodiversity Crisis*. National Resources Defense Council. (2020, December 15). <https://www.nrdc.org/press-releases/trump-administration-weakens-endangered-species-act-amidst-biodiversity-crisis>

²⁰ *Id.*

Fortunately, the ESA has continued to be amended throughout the Biden Administration which has repealed many changes made during the prior administration.²¹ Presently, economic factors are no longer considered in determining a species' vulnerability under the ESA. In addition, other restrictive Trump-era amendments have now been undone, such as the removal of restrictive definitions of "ecosystem" and "environment" from the act.²² The latter change provides greater latitude to provide protection to threatened and endangered species through further environmental protection in ecosystems that endangered species rely on. Though the current administration has been advancing the interests of endangered animals and plants, the volatile nature of the ESA is apparent, and protections recognized during one president's administration may be largely disregarded by the following administration.

In the midst of this swinging pendulum, state actors seek to advance both their economic interests and their valuable natural wildlife resources. States are concerned with constructing highways and development projects, but these plans are often irreconcilable with the protections afforded to threatened and endangered species when the former requires massive structures to be built in the environment of the latter.²³ Aside from physical intrusion, the endangered species are often further harmed by the long-term environmental impacts of development projects: the National Wildlife Federation cites "sewage, exhaust, trash, agricultural and lawn chemicals, industrial and powerplant emissions" as the most dangerous pollutants to wildlife.²⁴ These pollutants are often introduced to an environment through increased highway traffic leading to

²¹ Budryk, Z. (2023, June 21). *Biden Administration Moves to Reverse Trump-Era Endangered Species Act Rollbacks*. The Hill. <https://thehill.com/policy/energy-environment/4060536-biden-administration-moves-to-reverse-trump-era-endangered-species-act-rollbacks/>

²² *Id.*

²³ *Tennessee Valley Authority v. Hill*, 437 U.S. 153 (1968)

²⁴ *Pollution*. National Wildlife Federation. <https://www.nwf.org/Educational-Resources/Wildlife-Guide/Threats-to-Wildlife/Pollution>

more greenhouse gas emissions, or they are introduced through manufacturing facilities which create industrial waste.²⁵

One state where the government's interests in economic development and preservation of wildlife have clashed is New Jersey. New Jersey is brimming with biodiversity and some of the most important environmental preservation sites in America. This includes the Pine Barrens Highland and the Hackensack Meadowlands, both of which provide an ecosystem for numerous endangered and threatened avian species.^{26 27} Despite the importance of the region, however, the state has had a significant history of damaging the ecosystem of the Meadowlands by introducing pollutants.²⁸ This has been done in countless ways, including through creating landfills at the site to dispose of garbage and through manufacturing done by the Universal Oil Products from 1930-1979.²⁹ Compounding this problem is the fact that New Jersey is also one of the largest commuter states, and necessarily a highway-dependent state, with massive extensions and projects being made to its highway systems every year.³⁰

The state of New Jersey, in considering these interests, has historically favored economic development over the protection of its animals, especially in creating highways that impede crucial environments like the Meadowlands.³¹ Presently, state construction projects that impede on the

²⁵ Id.

²⁶ *Threatened & Endangered of the New Jersey Pinelands*. Pinelands Commission. NJ.gov. <https://www.nj.gov/pinelands/infor/fact/T&Efacts.pdf>

²⁷ *Brief History of the Region*. njaudubon.org. <https://njudubon.org/wp-content/wildlife/TrailGuides/MeadowlandsTrails/BriefHistoryoftheRegion.html>

²⁸ Hanley, R. (1987, September 7). *Meadowlands Glances Back at Dirty Past*. The New York Times. <https://www.nytimes.com/1987/09/07/nyregion/meadowlands-glances-back-at-dirty-past.html>

²⁹ Fallon, S. (2023, August 18). *Is this Meadowlands Superfund Site Clean Enough for Removal After 40 Years?*. North Jersey Media Group. <https://www.northjersey.com/story/news/environment/2023/08/18/is-meadowlands-superfund-site-clean-enough-epa-weighs-decision/70612793007/>

³⁰ Higgs, L. (2023, January 21). *N.J. Drivers Face the Worst Commutes in the U.S.* nj.com. <https://www.nj.com/news/2023/01/nj-drivers-face-the-worst-commutes-in-the-us-and-one-of-the-worst-in-the-world-2-studies-show.html>

³¹ *NJ Turnpike Interchange 6 to 9 Widening Program: NJ Turnpike History*. <http://www.njturnpikewidening.com/history.php>

Meadowlands environment clearly demonstrate that the ESA requires a more comprehensive means of preventing environmental degradation carried out on the part of state actors. Throughout the first half of the 20th century, the state allowed public and private use of the Meadowlands in manners so destructive that the resulting pollution still poses a danger to the wildlife present today. Manufacturing in the Meadowlands and improper disposal of waste has led to contaminated groundwater.³² Former landfills have continued to release methane and other greenhouse gases into the atmosphere, and traffic from nearby constructed highways has led to further air pollution.³³

The Meadowlands are currently under the control of the New Jersey Sports and Exposition Authority, a planning and regulatory agency.³⁴ In 1969, the Meadowlands was put under the control of state agencies, but the controlling agencies have since been reformed multiple times and made to merge with other agencies (starting as “Hackensack Meadowlands Development Commission” and eventually becoming the “NJ Meadowlands Commission”).³⁵ In 2015, the Meadowlands Commission was merged with the NJ Sports Exposition Authority (“NJSEA”). The executive agency aimed to increase gaming revenue for the state by overseeing the state’s largest sporting complex.³⁶ However, it is clear that the interests of the NJSEA prevailed over those of the former Meadowlands Commission as the state focused heavily on projects like the American Dream Mall (located in the Meadowlands), which it intended to establish as one of the largest shopping centers in America.³⁷

³² “*Legacy*” Mercury Pollution Still a Problem in New Jersey Meadowlands Waters. Newsroom. (2019, August 14). <https://sebsnjaesnews.rutgers.edu/2019/08/legacy-mercury-pollution-still-a-problem-in-new-jersey-meadowlands-waters/>

³³ *Solid Waste*. New Jersey Sports and Exposition Authority. <https://www.njsea.com/solid-waste/>

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Sports Complex*. New Jersey Sports and Exposition Authority. <https://www.njsea.com/sports-complex>

Yet another interested party is the New Jersey Turnpike Authority, another executive agency, whose 2023 expansion plans include a \$10 billion ten-yearlong highway project from Essex to Hudson County.³⁸ Not only would this highway expansion pass through the Meadowlands, but it would also likely cause increased traffic which brings along with it a host of negative externalities including increased carbon emissions.³⁹

It cannot be ignored that the interests of these state-created agencies often contradict those protections that the Federal Government seeks to afford to endangered plant and animal species. As such, these competing interests must be reconciled in a definitive way that protects the state's right to economic activities but does not impede the federally recognized rights of the threatened species from destruction of their habitats.

In light of multiple recent attacks made on the ESA by various presidential administrations in corroboration with corresponding state actors to advance industry, it is apparent that endangered species need not only an affirmative protection over economic interests, but also a limiting protection that limits state actors from interfering with federally protected habitats and species. The ESA must be amended to include a limitation on state governments, be it legislative or executive, to prevent them from taking certain discretionary actions that are contrary to the interest of an ESA recognized protected animal or an environment upon which many depend.

³⁸ Tully, T., & Mcgeehan, P. (2022, December 19). *Can a \$10 Billion Highway fix one of New Jersey's Worst Traffic Jams?* The New York Times. <https://www.nytimes.com/2022/12/19/nyregion/holland-tunnel-turnpike-extension.html>)

³⁹ Id.

II. New Jersey is Home to a Series of Biodiverse Ecosystems that are Critical in the Recovery of Endangered Species

New Jersey contains many environmentally diverse ecosystems and species, many of which are important environmental preservation sites and require heightened protection because of their unique nature qualities.⁴⁰ There are over 800 unique species found in New Jersey, eighty-four of which are considered threatened or endangered.⁴¹ These species are spread throughout the state, but many of the recognized endangered avian species in New Jersey depend on the Meadowlands, which make up the majority of New Jersey's wetlands and serve as an essential hunting, breeding, and nesting ground for migratory urban birds.⁴² Its wide range of biodiversity is a point of pride for New Jersey, and its ecosystems provide crucial benefits throughout the region.

As aforementioned, the Meadowlands is an important and crucial site for wildlife conservation, as it provides a sanctuary for migratory birds and a vast array of marine species. The Meadowlands is a thirty-two square mile (19,730 acre) area of land, of which approximately 8,400 acres are wetlands.⁴³ The land is located within both Hudson County and Bergen County, where the wetlands play a crucial role in the surrounding Hudson and Raritan ecosystem by providing a habitat for animals that travel throughout the adjacent municipalities of Secaucus, Newark, Jersey City, and Hackensack.⁴⁴ Of significance, the Meadowlands are one of the largest wetland

⁴⁰ *Brief History of the Region*. njaudubon.org. <https://njudubon.org/wp-content/wildlife/TrailGuides/MeadowlandsTrails/BriefHistoryoftheRegion.html>

⁴¹ *New Jersey's Endangered and Threatened Species Wildlife Field Guide*. Conserve Wildlife Foundation of New Jersey. <http://www.conservewildlifenj.org/species/>

⁴² Fallon, S. (2018, September 18). *Birds continue their remarkable comeback in the Meadowlands*. North Jersey Media Group. <https://www.northjersey.com/picture-gallery/news/environment/2018/09/12/meadowlands-now-haven-birds-according-audubon/1222076002/>

⁴³ *Meadowlands – Wide Information*. MESIC Report Meadowlands Wide Information Comments. <https://meri.njmeadowlands.gov/mesic/sites/meadowlands-wide-information/>

⁴⁴ *Important Bird Areas - Meadowlands District*. New Jersey Audubon Society. <https://njudubon.org/wp-content/ibba/www.njudubon.org/SectionIBBA/IBBASiteGuidefca.html?sk=3169>

complexes in the entirety of the Hudson and Raritan estuary system, and it provides protection to “33 state-listed endangered, threatened, declining, or rare birds: 12 hawks and owls, 7 songbirds, 4 herons, 4 Charadriiformes, 2 rallids, and 4 others (a grebe, a cormorant, a hummingbird, and a woodpecker).”⁴⁵ “In July 2002, an apparent family group of Northern Harrier (Endangered) was observed on multiple days at the Carlstadt-Moonachie marshes (Empire tract), indicating breeding at that location. Thus, the Empire tract and the Berry’s Creek marshes are the two known breeding localities for endangered species in the Meadowlands.”⁴⁶ A map of the Meadowlands is provided below for geographic context:

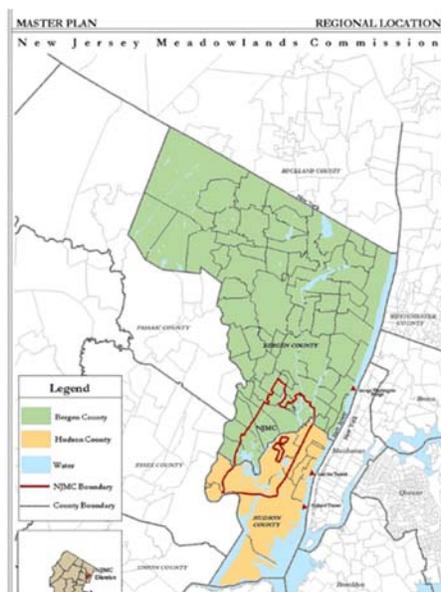


Figure 1 - Map of Meadowlands

⁴⁵ *Rebuild by Design Meadowlands*. Dep.nj.gov. (n.d.). <https://dep.nj.gov/floodresilience/rebuild-by-design-meadowlands-project-overview/>

⁴⁶ Kiviat, E. & MacDonald, K. *Hackensack Meadowlands, New Jersey, Biodiversity: A Review and Synthesis*. EPA. https://www.epa.gov/sites/production/files/2017-05/documents/kiviat_and_mcdonald_2002_hackensack_meadowlands_biodiversity_review.pdf

Undoubtably, the site of the Meadowlands is paramount in its importance to ecosystems throughout northern New Jersey and New York. Significantly, its location falls between several urban centers such as Newark, NJ, Jersey City, NJ, and New York, NY.⁴⁷ This location gives urban migratory avian species who may travel throughout the region a place to nest, hunt, and reproduce that they would not otherwise have in large cities. The Meadowlands thus serve as an essential part of the urban avian species lifestyle and make it possible for birds to live and migrate through the region.⁴⁸ Urban wetlands have unique ecological and social values precisely because they are located within an urban context where the resources they provide are so rare.⁴⁹ The Meadowlands are essential to the urban ecosystem because it provides a natural environment for migratory birds that are found in the urban sprawl: “The Meadowlands are one of 11 critical migration corridors in New Jersey.”⁵⁰ The Meadowlands are also used by the waterfowl species for wintering, breeding, and migrating. Furthermore, there has been designated an area of “special concern” under the North American Waterfowl Management Plan.⁵¹

Avian species, while the main beneficiaries of the Meadowlands, are not the sole phylum dependent, or even taxonomic kingdom, that is dependent on the Meadowlands. One 2003 study of certain species at the Meadowlands took a specific look at the function of bees located in the region. “There is a general concern about the decline of native pollinators, especially bees, in North America. A diverse community of mostly native bees was studied at an inactive garbage landfill in the Meadowlands, where there were various nectar plants and nest habitats in eroding soil and

⁴⁷ *Important Bird Areas - Meadowlands District*. New Jersey Audubon Society. <https://njudubon.org/wp-content/ibba/www.njudubon.org/SectionIBBA/IBBASiteGuidecfca.html?sk=3169>

⁴⁸ *Id.*

⁴⁹ *Rebuild by Design Meadowlands*. N.J. DEP. <https://dep.nj.gov/floodresilience/rebuild-by-design-meadowlands-project-overview/>

⁵⁰ *Id.*

⁵¹ Day, C., Staples, J., Russell, R., Nieminen, G. & Milliken, A. (1999). *Hackensack Meadowlands National Wildlife Refuge: A presentation for a new establishment*. Pleasantville, NJ: U.S. Fish and Wildlife Service.

hollow plant stems.”⁵² As the main pollinators of the region, seventy-eight species of bees depend on the Meadowlands environment to sustain their population.⁵³ The loss of pollinators in an ecosystem leads to decreased fertility of plants, lowering the energy available in lower tropic layers and lowering the carrying capacity of an environment for many animals in the ecosystem.⁵⁴ It follows that the loss of pollinators in the region may lead to the Meadowlands being unable to sustain many avian species.

The Meadowlands is also home to scores of animals whose existence is not threatened nor endangered, but whose natural habitats deserve protection, nonetheless. Of the 270 species of birds that occupy the Meadowlands, most are not endangered. Over sixty-five marine species also occupy the region.⁵⁵ “The lower Hackensack River system was declared [an] essential fish habitat by the National Marine Fisheries Service for six species: red hake, black sea bass, Atlantic butterfish, and three flounders (Pleuronectidae and Bothidae), and designation was pending for bluefish and Atlantic herring.”⁵⁶ There are countless other species that can be found in the Meadowlands, all of which live in a balanced ecosystem that provides essential support for the surrounding areas and provide for the survival of endangered and threatened species within the state of New Jersey. The Meadowlands plays a critical role in the preservation of endangered avian and marine species in addition to its contribution to the protection of numerous threatened and non-threatened species that must be recognized by the state.

⁵² Shepherd, M., Buchmann, S.L., Vaughan, M. & Black, S.H. (2003). *Pollinator conservation handbook*. Portland, OR: Xerces Society

⁵³ *The Meadowlands is home to 78 species of bees, study says*. NJ.com. (2010, July 10).
https://www.nj.com/news/2010/07/meadowlands_is_home_to_78_spec.html

⁵⁴ *What would happen if bees became extinct?*. Just Bee Honey. (2021, February 12).
<https://justbeehoney.co.uk/blogs/just-bee-honey-blog/what-would-happen-if-all-bees-died>

⁵⁵ Ensslin, J. C. (2017, September 13). *Jersey icons: The Meadowlands - how a dumping ground became an environmental gem*. North Jersey Media Group. <https://www.northjersey.com/story/news/new-jersey/2017/09/13/jersey-icons-meadowlands-how-dumping-ground-became-environmental-gem/661320001/>

⁵⁶ Day, C., Staples, J., Russell, R., Nieminen, G. & Milliken, A. (1999). *Hackensack Meadowlands National Wildlife Refuge: A presentation for a new establishment*. Pleasantville, NJ: U.S. Fish and Wildlife Service.

III. The [Original] Meadowlands Were Systematically Destroyed Through Official and Private Acts

Despite the indispensable function that the Meadowlands serves for New York and New Jersey ecosystems, there is a long history of environmental abuse carried out by both public and private actors who have held land in the Meadowlands.⁵⁷ During the first half of the 20th century, the Meadowlands underwent rapid urbanization to keep up with the immediately surrounding urban centers.⁵⁸ The Meadowlands became industrialized: factories were put up, industrial waste was disposed of in the Hackensack River, and the remaining vacant land was used as a landfill.⁵⁹ These actions have largely impacted the Meadowlands wildlife and many still require corrective action today.

The history of abuse of the Meadowlands environment has been extensive. As the New York Times puts it: “the Meadowlands still lives with its past as a wasteland of polluted swamp, garbage dumps and industrial trash.”⁶⁰ There was also substantial dumping into the Hackensack River that has led to vast pollution. “Until the late 1960s, most of the sewage and industrial waste discharged into the Hackensack River was untreated, according to a study by the Interstate Sanitation Commission.”⁶¹ There are dozens of landfills located inside the Meadowlands which continue to present ecological and environmental problems.⁶²

⁵⁷ Marshall, S. (2004, December 1). *The Meadowlands Before the Commission: Three Centuries of Human Use and Alteration of the Newark and Hackensack Meadows*. Urban Habitats. https://www.urbanhabitats.org/v02n01/3centuries_full.html

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Hanley, R. (1987, September 7). *Meadowlands Glances Back at Dirty Past*. The New York Times. <https://www.nytimes.com/1987/09/07/nyregion/meadowlands-glances-back-at-dirty-past.html>

⁶¹ Crawford, D.W., Bonnevie, N.L., Gillis, C.A. & Wenning, R.J. (1994). *Historical changes in the ecological health of the Newark Bay estuary, New Jersey. Ecotoxicology and Environmental Safety*, 29, 276–303.

⁶² Marshall, S. (2004, December 1). *The Meadowlands Before the Commission: Three Centuries of Human Use and Alteration of the Newark and Hackensack Meadows*. Urban Habitats. https://www.urbanhabitats.org/v02n01/3centuries_full.html

Among other concerns, the landfills at the Meadowlands create large buildups of methane gas, a greenhouse gas, which presents a catch-22 in its disposal: the gas can either seep into the nearby air and water supply as it is released from the landfills causing ecological harm through pollution or it can be burned off through constant fires which have historically killed some of the wildlife.⁶³

As a consequence of these landfills, physical debris has polluted the water in the Meadowlands. The Meadowlands Commission created its own report on the condition of the water in the wetlands:

Waterways that remain are especially significant for concentrations of federal trust species and state-listed species of concern, including waterfowl, wading birds, shorebirds, raptors, anadromous fish, estuarine fish, and terrapins. Much of the wetlands area in the Meadowlands is degraded due to physical disturbances, such as filling and alterations to natural hydrologic connections. Leachate contamination from extensive landfills in the area is common. Numerous point sources, stormwater runoff from developed areas and highways, and other non-point sources have severely degraded water and sediment quality in the habitat complex.⁶⁴

A further ecological disaster for the Meadowlands has been the negative externalities of a location so proximal to one of the largest highway systems in New Jersey – the New Jersey Turnpike.⁶⁵ In addition to pollution from all other sources, the New Jersey Turnpike provided an additional source of pollution in its contribution to the increase of carbon emissions in the Meadowlands.⁶⁶ The Turnpike created a pattern of pollution in the Meadowlands by bringing

⁶³ Rojas, R. (2017, April 26). *Invisible “Bird Killer” Lurks in Revitalized New Jersey Meadowlands*. The New York Times. <https://www.nytimes.com/2017/04/26/nyregion/invisible-bird-killer-lurks-in-revitalized-new-jersey-meadowlands.html>

⁶⁴ *Meadowlands – Wide Information*. MESIC Report Meadowlands Wide Information Comments. <https://meri.njmeadowlands.gov/mesic/sites/meadowlands-wide-information/>

⁶⁵ Gelman, J. L. (2013, May 24). *Cancer alley: NJ Meadowlands to be tested for cancer causing substances*. Workers’ Compensation. <https://workers-compensation.blogspot.com/2013/05/cancer-alley-nj-meadowlands-to-be.html>

⁶⁶ *Climate Action Needed by NJDOT and Turnpike Authority*. Empower New Jersey. (2022, June 11). <https://empowernewjersey.com/climate-action-needed-by-njdot-and-turnpike-authority/>

substantial and consistent traffic flow into the area, as both spurs of the Turnpike reach throughout Essex, Bergen, and Passaic counties, which contains the Meadowlands. Moreover, pollution is a natural result of the use of the turnpike as “wear and tear on tires causes particulate emissions that have been found to be [substantially] worse for local air quality than tailpipe emissions. Electrification can even make this worse by increasing vehicle weights” which will create more tire wear and increase the level of particulate matter in the atmosphere.⁶⁷

Despite these abundant sources of pollution, the most egregiously anti-environmental use of the Meadowlands thus far has been its role as a landfill. “At one point, in 1969, a state survey found that 5,000 tons of waste arrived in the Meadowlands daily, from more than 100 communities around New Jersey.” (11). The waste received was then placed into the ground, and sometimes built upon (including portions of the New Jersey Turnpike).^{68 69} These deposits of waste still sit under the ground today, continuing to slowly release methane into the atmosphere.⁷⁰ It is the practice of the NJSEA to burn some of the methane off from these landfills.⁷¹ In a 2017 investigative report, the New York Times visited the Meadowlands to observe the residual landfills.⁷² In describing one such landfill where the methane was being burned off, the reporter noted the process as such: “a stack that released a flame that was virtually invisible, except for a glassy haze. It burns continuously, sometimes reaching close to 20 feet high and temperatures of

⁶⁷ Columnist, J. J. G. (2023, January 9). *Even with electric vehicles, an expanded turnpike extension would be bad for the environment: Opinion*. NJ.com. <https://www.nj.com/opinion/2023/01/even-with-electric-vehicles-an-expanded-turnpike-extension-would-be-bad-for-the-environment-opinion.html>

⁶⁸ *News Release - 06/12/2017*. NJDEP. (n.d.). https://www.nj.gov/dep/newsrel/2017/17_0061.htm

⁶⁹ *Wetlands of New Jersey*. Fishing & Wildlife Services. <https://www.fws.gov/wetlands/documents/Wetlands-of-New-Jersey.pdf>

⁷⁰ Rojas, R. (2017, April 26). *Invisible “Bird Killer” Lurks in Revitalized New Jersey Meadowlands*. The New York Times. <https://www.nytimes.com/2017/04/26/nyregion/invisible-bird-killer-lurks-in-revitalized-new-jersey-meadowlands.html>

⁷¹ *Id.*

⁷² *Id.*

almost 1,000 degrees.”⁷³ According to the reporter, there are obvious indications that the landfills have substantially altered the land and created lasting effects which make it difficult to inhabit now. “It is one of the signs that the mounds here were formed not by nature, but rather by the mountains of garbage that built up when the area was an open landfill.”⁷⁴ Some examples of the mounds as described in the Meadowlands are provided below for context:



Figure 2 - Images of landfills in the Meadowlands

The flames from the continuous burning at these mounds pose a significant danger to the wildlife present at the Meadowlands. The report continues: burning off methane created by decomposing garbage poses a potentially lethal threat to unsuspecting birds that pass through it.⁷⁵

⁷³ Id.

⁷⁴ Id.

⁷⁵ Id.

In many instances, larger birds have been found with singed wings, unable to fly or fend for themselves, but many birdwatchers believe that smaller birds are simply incinerated.”⁷⁶



Figure 3 - A red-tailed hawk with singed wings found in the Meadowlands

Clearly, the situation for conservationists in this instance is thorny: either accelerate the global climate crisis with greenhouses gasses or create dangerous fires that kill wildlife. Nonetheless, burning the excess methane will likely lead to further avian deaths. “In recent weeks, the trust has taken in two red-tailed hawks that had debilitating burns believed to have been caused by the flame, injuries that could have been fatal had the birds not been found.”⁷⁷

⁷⁶ Id.

⁷⁷ Id.

Avian species suffering injuries because of these methane fires were further documented by Chris Soucy, the executive director of the Raptor Trust in Morris County, in 2016 and 2017.⁷⁸ In commenting on the kinds of injuries birds have suffered, he stated: “damage to its wings and tail make [burned birds] completely unable to survive in the wild and hunt and live successfully.”⁷⁹ As such, there are a number of polluting elements present in the Meadowlands that adversely impact the health of the species that live therein, mainly stemming from the industrial development and commercial use of the land.

Interestingly, there is sometimes a workable solution in situations where methane gas is produced in a concentrated area. “Many landfills burn off the methane, as is done [at the Kingsland landfill in the Meadowlands], but harvesting the gas has become more of an option” stated Monica Mazurek, a professor of civil and environmental engineering at Rutgers.⁸⁰ Under certain circumstances, it is possible to capture this trapped methane and use it for fuel.⁸¹ However, this option has only been used in a limited manner, as it was deemed infeasible by the NJSEA, and they are not considering capturing the methane at the Meadowlands: “[the Commission] said the authority had plans to capture methane at another of its landfills, but that was “not currently a viable option for the Kingsland Landfill flare.”⁸² Though, as of 2023, the NJSEA harvests methane from 550 acres of the landfills in the Meadowlands.⁸³ Though some ameliorative efforts have been

⁷⁸ Fallon, S. (2019, October 7). *Hawks badly burned by new Meadowlands Landfill Flame; gas flare installed without barrier*. North Jersey Media Group.

<https://www.northjersey.com/story/news/environment/2019/10/07/hawks-burned-meadowlands-landfill-flame/3867558002/>

⁷⁹ *Id.*

⁸⁰ Rojas, R. (2017, April 26). *Invisible “Bird Killer” Lurks in Revitalized New Jersey Meadowlands*. The New York Times. <https://www.nytimes.com/2017/04/26/nyregion/invisible-bird-killer-lurks-in-revitalized-new-jersey-meadowlands.html>

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Methane*. New Jersey Sports and Exposition Authority. <https://www.njsea.com/methane/>

made to restore the environmental health of the Meadowlands, the effects of industrialization in the area are still hard-felt and remain to be addressed.

An interesting set of parties to the environmental protection equation at the Meadowlands are private radio stations who erected AM radio towers in the Meadowlands.⁸⁴ Despite being among the pioneers of the industrialization of the Meadowlands, the threat of further industrialization and large buildings in the area could interfere with the signal from the towers.⁸⁵ As such, they vehemently oppose further construction in the Meadowlands; however they are supporting the right cause for the wrong reason. Waters, McPherson, McNeill, P.C, a New Jersey firm, dedicated to representing this class of radio tower managers, provide on their firm's website:

Tall buildings located near AM antennas may cause interference to the signal, resulting in diminished strength.

We represent radio stations facing signal interference from new development. When new projects are planned, we work with stations' professional engineering staff to identify what impacts the development will have on the AM broadcaster. If a station is affected, we represent the station before the redevelopment agency sponsoring the project to insure consideration of the radio station in the planning and design.

In some instances, planning considerations cannot be met, in which cases we have brought litigation to protect stations from planning designs that will put them off the air.

Strangely, animal rights activists may have found an unlikely ally in parties who previously capitalized on the exploitation of the Meadowlands to build radio towers. Nonetheless, the radio tower managers' involvement in these matters is merely incidental to the true danger: commercial use of critical habitats used in the preservation of species.

⁸⁴ *Meadowlands Radio Towers*. Waters McPherson McNeill, P.C. <https://lawwmm.com/RadioTowers.asp>

⁸⁵ *Id.*

As a cumulative result of all the sources of pollution in the Meadowlands, the water poses many hazards to animals who are exposed to it.⁸⁶ In 2004, the State Health Commission issued advisories that there was a presence of PCB and dioxin in the Hackensack River Estuary and warned against consumption of any blue crab or striped bass from the Hackensack River, and they warned that white catfish caught there should only be consumed at a maximum of once per year for the general population and not at all for high-risk individuals.⁸⁷ Since that time, in 2022, the lower Hackensack River was added to the Superfund National Priorities list due to the EPA finding “arsenic, lead, chromium, mercury, polycyclic aromatic hydrocarbon compounds (PAHs) and polychlorinated biphenyls (PCBs)” in the river.⁸⁸ From the evidence, it is clear that the misuse of the Meadowlands in the past have had a substantially detrimental impact on the environmental health, and it is the troubling conclusion that modern efforts have been unsatisfactory in addressing the environmental crisis presently unfolding. Until the state acknowledges its responsibility in preserving its limited natural resources, the state will not be able to make effective use of its most critical preservation ecosystem.

⁸⁶ Kiviat, E. & MacDonald, K. *Hackensack Meadowlands, New Jersey, Biodiversity: A Review and Synthesis*. EPA. https://www.epa.gov/sites/production/files/2017-05/documents/kiviat_and_mcdonald_2002_hackensack_meadowlands_biodiversity_review.pdf

⁸⁷ *Id.*

⁸⁸ McBay, S. (2022, September 7). *EPA Adds the Lower Hackensack River to the Superfund National Priorities List*. EPA.gov. <https://www.epa.gov/newsreleases/epa-adds-lower-hackensack-river-superfund-national-priorities-list>

IV. The Damage Resulting from the New Jersey State Entities That Took Control of the Meadowlands

Despite the extensive damage to the area, the New Jersey executive agencies have no plans to slow the economic development of the Meadowlands any time soon. A number of state agencies presently operate in the Meadowlands to some degree including the NJ Sports and Exposition Authority (NJSEA) and the NJ Turnpike Authority (NJTA).⁸⁹ The first state agency to take action in the Meadowlands was the Hackensack Meadowlands Development Commission, created in 1968 and charged with “facilitat[ing] the development of the remaining Meadowlands” promoting economic development in the region.⁹⁰ The Commission was created because then-Governor Hughes believed that the population of North Jersey would increase due to the turnpike expansion in the late 60s, so he sought to capitalize on the rising property values that he anticipated would affect the real property market in the Meadowlands.⁹¹ In 1971, the state sought further economic benefit from the area by creating the NJ Sports and Exposition Authority to build and operate the Meadowlands Sports Complex, which included a new racetrack and Giants Stadium (with the IZOD center soon to follow).⁹² In 2015, the Meadowlands Development Commission was dissolved and merged with the NJSEA.⁹³

Presently, the NJSEA is the state agency responsible for maintenance and *development* of the Meadowlands.⁹⁴ Despite the benefit of hindsight and our extensive understanding of the destructive nature of landfills under protected areas, the state still fails to maintain the land

⁸⁹ *About the NJSEA*. New Jersey Sports and Exposition Authority. <https://www.njsea.com/who-we-are/>

⁹⁰ Linky, D. (2020, July 22). *Byrne Administration: The Meadowlands*. Eagleton Center on the American Governor. <https://governors.rutgers.edu/byrne-administration-the-meadowlands/>

⁹¹ *Id.*

⁹² *Id.*

⁹³ Sullivan, S. P. (2015, February 5). *Christie Signs Controversial Meadowlands Overhaul, but Says Bill Will be Revised*. NJ.com. https://www.nj.com/news/2015/02/christie_signs_controversial_meadowlands_bill_but.html

⁹⁴ *About the NJSEA*. New Jersey Sports and Exposition Authority. <https://www.njsea.com/who-we-are/>

responsibly. As recently as 2020, the state continued to operate a landfill at the Meadowlands.⁹⁵ This landfill is more than half a century old: “For nearly 70 years, the Keegan Landfill in Kearny was operable until a court ordered it to shut down in 2020 and directed its owner, the New Jersey Sports & Exposition Authority, to clean the 100-acre property along Bergen Avenue for future recreational use.”⁹⁶ However, more than three years after its ordered shutdown, the residual waste continues to pollute the Township of Kearny in the Meadowlands with gases like hydrogen sulfide.⁹⁷ In March 2021, the US Department of Environmental Protection endorsed the placement of “a geomembrane cover system across the entire landfill,” but permits for the liner and closure are still outstanding.⁹⁸

On the other hand, the NJSEA’s reluctance to comply with the shutdown order raises legitimate questions as to the true limit of the executive power in New Jersey. Now, Kearny residents are wondering if it will take another lifetime before they see the conversion.⁹⁹ Those living near and upland of the site have complained of breathing in noxious fumes from the dump, causing headaches, nausea, and dizziness.¹⁰⁰ Of course, the environmental damage suffered from the operation of the landfill is not borne entirely by the humans who live nearby, but the animal and plant species whose environments are harmed as well. NJSEA’s failure to rectify this condition after court order raises questions of competence: surely, there must be a limit to the state’s discretion to favor economic interests over conservation interests.

⁹⁵ *Keegan Landfill*. Town Of Kearny. (2019, October 4). <https://www.kearnynj.org/keegan-landfill/>

⁹⁶ Villanova, P. (2019, June 12). *N.J. Supreme Court orders Keegan Landfill to temporarily close*. NJ.com. <https://www.nj.com/hudson/2019/06/nj-supreme-court-orders-keegan-landfill-to-temporarily-close.html>

⁹⁷ *Keegan Landfill*. Town Of Kearny. (2019, October 4). <https://www.kearnynj.org/keegan-landfill/>

⁹⁸ Lear, R. (2022, July 12). *Nearly 3 years after agreement to close it, Keegan cap still not on, causing many to wonder: Will this ever end?*. The Observer Online. <https://www.theobserver.com/2022/07/12/nearly-3-years-after-agreement-to-close-it-keegan-cap-still-not-on-causing-many-to-wonder-will-this-ever-end/>

⁹⁹ *Id.*

¹⁰⁰ *Id.*

The NJSEA is not the sole state entity that poses a threat to the Meadowlands. This year, the Turnpike Authority is considering a new ten-year project to extend bridges from Essex to Passaic County.¹⁰¹ The extension project would cost approximately \$4.7 billion dollars if approved and would take approximately ten to fifteen years to complete.¹⁰² “Essentially, the project would widen and add lanes in a key stretch between Newark Airport and the entrance to the Holland Tunnel, which leads to downtown Manhattan,” but would tear right through the Meadowlands.¹⁰³

Critics of the project say that the expansion of the turnpike will create more traffic and emissions, while doing little to free the state from its dependency on highway systems.¹⁰⁴ The Turnpike has already had a substantial environmental impact on the Meadowlands, and this project will only lead to further ecological damage.¹⁰⁵ “New Jersey’s greenhouse gas (GHG) emissions have increased by up to 19% from 6 major fossil fuel expansion projects approved by the Murphy Administration over the past 4 years and have the potential to increase an additional 38% if 7 pending projects are approved and completed during his 2nd term.”¹⁰⁶

Notable critics and opponents of the plan include: the mayor of Jersey City, the *Newark Star-Ledger* editorial board, the city councils of Hoboken and Jersey City, hundreds of state environmental groups, and many residents and activists. According to reports, several Hoboken council members, including those who sometimes clash with each other politically, have joined

¹⁰¹ Jaffe, T. (2022, August 31). *Climate Change and a Turnpike in New Jersey*. The American Prospect. <https://prospect.org/infrastructure/transportation/climate-change-and-turnpike-in-new-jersey/>

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *EMPOWERNJ Analysis Shows Murphy Administration not Serious About Climate Goals*. Insider NJ. (2022, April 17). <https://www.insidernj.com/press-release/empowernj-analysis-shows-murphy-administration-not-serious-about-climate-goals/>

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

forces with environmentalists this week in going on the record to oppose a \$4.7 billion turnpike extension widening planned for Jersey City.¹⁰⁷

The Jersey City Mayor even took to social media and updated X: “This proposal would bring more traffic and more pollution to [Jersey City.] Instead, the investment here for NJ should be in mass transit as we have plenty of needs on that front.”¹⁰⁸

The administration of Gov. Phil Murphy has argued that the project is needed to replace roadways between Exit 14A and 14C, from Newark to Jersey City, because of decades of damage and obsolescence: “Aging infrastructure, such as the two-lane Newark Bay Bridge, would be replaced with a new four-lane structure. New Jersey Gov. Phil Murphy and the plan’s proponents claim that the multibillion-dollar project will alleviate notoriously heavy congestion and traffic on this stretch of the turnpike.”¹⁰⁹

Support for these redevelopment projects comes unsurprisingly in the form of labor unions who favor a Keynesian economic view of development: the more jobs to negotiate over, the better. “Murphy is joined in this support by organized labor. Despite his Wall Street background, Murphy has enjoyed trade union support since his initial gubernatorial run in 2017, and has raised millions of dollars from them. It is indeed several of New Jersey’s construction unions that are most enthusiastic about this project; they vouch for the union jobs it will create and claim that environmental concerns are misguided.”¹¹⁰ The turnpike is just one instance where the state agencies were in favor of economic development of the conservation of valuable habitats and resources.

¹⁰⁷ Lissner, C. (2022, August 10). *Hoboken officials publicly oppose \$4.7B turnpike extension widening*. Hoboken, NJ Patch. <https://patch.com/new-jersey/hoboken/hoboken-officials-publicly-oppose-4-7b-turnpike-extension-widening>

¹⁰⁸ <https://twitter.com/stevenfulop/status/1482007769544892419>

¹⁰⁹ Jaffe, T. (2022, August 31). *Climate Change and a Turnpike in New Jersey*. The American Prospect. <https://prospect.org/infrastructure/transportation/climate-change-and-turnpike-in-new-jersey/>

¹¹⁰ Id.

V. Recommendations for Improving the Meadowlands and Creating Greater Protections for the Animals Who Reside There

The NJSEA and similar state agencies need to be more closely regulated by Congress and the ESA in their discretionary actions. Functionally, this poses a pressing Constitutional issue, because the Federal Government would essentially be regulating a *state agency*. Fundamentally, the Federal Government cannot commandeer state legislatures or state entities, and in the present context, the NJSEA can only be regulated by the Federal Government pursuant to the Endangered Species Act, and, to a lesser degree, the Animal Welfare Act of 1966 (*supra*). However, under the taxing power, Congress may condition the grant of Federal funds to states who comply with certain requirements.¹¹¹ In Dole, the Supreme Court upheld a congressional act that granted an additional ten percent of funds for highway development to states who raised their minimum drinking age to twenty-one years old.¹¹²

Interestingly, Congress does disburse funds for the conservation of species to the states.¹¹³ Perhaps, they may condition these funds to the states upon the states' strict enforcement of environmental protections to state endangered species lists. In theory, this could be a limitation on the state agencies within the limits of the Constitution. Nonetheless, there is a pattern of state actors turning their back on environments and species that are federally recognized as endangered or threatened. Even when New Jersey agencies have the benefit of hindsight and are made aware of the damage that stands to occur from economic development, environmental impact studies are seemingly ignored, and the state agencies refuse to forego economic opportunities when the best interest aligns with recognizing and protecting the rights of at-risk animals.

¹¹¹ South Dakota v. Dole, 483 U.S. 203 (1987)

¹¹² Id.

¹¹³ *Species recovery grants to states*. NOAA. (2023, October 18). <https://www.fisheries.noaa.gov/grant/species-recovery-grants-states>

To make matters worse, the ESA has often been amended to skirt environmental protections when the President takes issue with it.¹¹⁴ Such maneuvers were most recently made during President Trump's administration when the ESA was amended to require consideration of economic factors when weighing what protections should be provided to vulnerable species.¹¹⁵ Previous versions of the ESA only allowed decisions to be based on science and "without reference to possible economic or other impacts of determination."¹¹⁶ This change allowed economic interests to take priority over the conservation of endangered and threatened species. This intention runs counter to the enactment of the ESA in the first place, which was implemented to restore endangered species to sustainable levels and prevent the loss of species.

Though the ESA has thus far survived the attacks made on it during the 21st century, there have been many instances where the president amended the ESA to make it weaker or to skirt its provisions. Fortunately, President Biden has taken significant steps to undo changes made to the ESA during the Trump administration and reinstate its previous strength. Such measures include: removing the consideration of economic impact in determining whether a species is endangered; withdrawal of a 2020 rule that limited which lands and waters could be designated as places where imperiled animals and plants could receive federal protection; and reversal of Trump's decision to weaken enforcement of the century-old Migratory Bird Treaty Act, which made it harder to prosecute bird deaths caused by the energy industry.¹¹⁷

¹¹⁴ *The Endangered Species Act: Celebrating 50 years of success in wildlife conservation*. U.S. Department of the Interior. (2023, February 13). <https://www.doi.gov/blog/endangered-species-act-celebrating-50-years-success-wildlife-conservation>

¹¹⁵ *Environmentalists warn trump "weakening" endangered species protections* (2019, August 12). BBC News. <https://www.bbc.com/news/world-us-canada-49323321>

¹¹⁶ *Id.*

¹¹⁷ Brown, M. & Flesher, J. (2023, June 21). *Biden Administration Moves to Restore Endangered Species Protections Dropped by Trump*. PBS. <https://www.pbs.org/newshour/politics/biden-administration-moves-to-restore-endangered-species-protections-dropped-by-trump>

These measures were made in time to save much of the impact of the ESA but are indicative that the ESA is ineffective at preventing rogue, profit-driven political agents from state agencies from making decisions that otherwise should be considered environmental destruction under the ESA. Because state executive officers can violate [often ignore or, even worse, disobey] the express will of Congress to protect threatened and endangered species in favor of economic interests, the ESA needs to be amended to limit the power of executive agencies to make decisions directly contrary to the Congressional mandates of the ESA. The Meadowlands is just one example in a storied history of the prolonged battle for greater protection for endangered species. Seemingly, the NJSEA and NJTA are able to skirt the provisions of the ESA and contribute to the destruction of lands that they have an affirmative duty to protect. Congress should learn from this example and find a way to preempt state actors who fall out of compliance with the ESA in favor of economic development plans that undermine the achievements that animal rights communities have been fighting for since the 20th century.

VI. Conclusion

The Endangered Species Act (ESA) of 1973 marked a significant advance in foundational animal rights and established crucial protections for endangered and threatened species in the United States. However, the promising trend of the ESA in establishing fundamental rights for species and critical environments has been undercut by spontaneous Congressional exemptions—highlighting the act's susceptibility to political motivations—and state agencies' failure to grant endangered species' rights higher priority over short-term economic interests.

The conflict between economic interests and environmental preservation is vividly illustrated by the state of New Jersey, where highway development projects often encroach on critical preservation ecosystems, namely the Meadowlands. The historical exploitation and systematic destruction of the Meadowlands has subjected this vital preservation area to industrialization, extensive dumping, and pollution, leading to severe environmental consequences. To address the interplay between Congressional conservation goals and state economic interests, amendments to the ESA should include limitations on certain state actions that could jeopardize federally protected habitats and species, ensuring a more consistent and comprehensive protection for endangered wildlife.

Moreover, to address this friction between the state and federal governments, increased federal oversight and regulation of state entities, such as the NJSEA, are imperative. Congress should consider leveraging conditional grants under the taxing power to incentivize responsible environmental practices. Without such measures, the Meadowlands stands as a poignant example of the urgent need to prioritize conservation over short-term economic gains. New Jersey's historical prioritization of economic development, as seen in projects which have impacted wildlife and introduced pollutants, emphasizes the need for a more preservation-focused approach.