

e. Bald Eagle

Bald eagles are known to utilize Okefenokee National Wildlife Refuge. Because Trail Ridge is an inseparable component of the larger refuge ecosystem, any mining disturbances stand to potentially affect the nesting and hunting success of the bald eagles that depend upon the waters of the Swamp.

f. Florida Black Bear

Florida black bears are known to occur on the site, as well as within the Refuge. Though the species is not federally-listed, the Florida black bear continues to suffer from a lack of connectivity and meaningful gene flow between populations.²⁴⁸ The proposed mine threatens to further impair connectivity and, at least for the duration of mining, will likely result in the localized disappearance of the species from the larger tract. How this will affect the long-term genetic viability of the larger population is unaddressed by Twin Pines.

B. Twin Pines fails to demonstrate compliance with the Endangered Species Act.

All aspects of the Corps' permitting, and indeed the mine itself, must comply with the Endangered Species Act (ESA), "a powerful and substantially unequivocal statute."²⁴⁹ Congress enacted the ESA "to provide a program for the conservation of ... endangered species" and "to provide a means whereby the ecosystems upon which [such] ... species depend may be conserved."²⁵⁰

"Conservation" and "conserve" mean "to use and the use of all methods and procedures which are necessary to bring an endangered species ... to the point at which the measures provided pursuant to [the ESA] are no longer necessary"—i.e. to recover such species from imperiled status.²⁵¹ Thus, "[t]he plain intent of Congress in enacting this statute was to halt and reverse the trend toward species extinction, whatever the cost."²⁵² To accomplish this objective, the ESA was designed to be "the most comprehensive legislation for the preservation of endangered species ever enacted by any nation."²⁵³ "[T]he language, history, and structure of the [ESA] indicates beyond doubt that Congress intended endangered species to be afforded the highest of priorities."²⁵⁴ This conservation mandate colors the Act from nose to tail.

²⁴⁸ Dixon, J.D., Oli, M.K., Wooten, M.C. et al. 2007. *Conserv Genet.* 8: 455.

²⁴⁹ *Loggerhead Turtle v. Cty. Council of Volusia Cty., Fla.*, 148 F.3d 1231, 1246 (11th Cir. 1998) (quoting *Strahan v. Linnon*, 967 F.Supp. 581, 618 (D. Mass.1997), *aff'd* 187 F.3d 623 (1st Cir. 1998)).

²⁵⁰ 16 U.S.C. § 1531(b).

²⁵¹ *Id.* § 1532(3); *see also* 50 C.F.R. § 402.02 (defining "recovery").

²⁵² *Fla. Key Deer v. Paulison*, 522 F.3d 1133, 1138 (11th Cir. 2008) (quoting *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 184, 194 (1978)).

²⁵³ *Tenn. Valley Auth.*, 437 U.S. at 180.

²⁵⁴ *Loggerhead Turtle*, 148 F.3d. at 1246 (quoting *Tenn. Valley Auth.*, 437 U.S. at 174).