



Endangered Species Act Overview

“ESA for Non-Majors”

Definitions

- **Endangered:** Any species in danger of extinction throughout all or a significant portion of its range.
- **Threatened:** Any species likely to become endangered in the foreseeable future in all or a significant portion of its range.

Definitions

- **Candidate Species:** Species for which the FWS has substantial information on file to support a proposal to list
- No proposal to list has been made
- No protection under the ESA



Purposes of ESA

- **Provide a program for the conservation of Threatened and Endangered species**
- **Provide a means whereby ecosystems of Threatened and Endangered species may be conserved**



LISTING PROCESS

• **Listable Entities:**

- **Species**
- **Subspecies**
- **Distinct Population Segments of Vertebrates (rarely used)**



LISTING PROCESS

⊗ **2 possible starting points:**

⊗ **List of Candidate Species**

⊗ **Petition to List**



DESIGNATING CANDIDATE SPECIES

- **Species are designated candidates after internal review of surveys and substantial reports on field studies:**
- **Data Sources:**
 - Internal data
 - Information from other agencies
 - Information from States, Private groups

LISTING CANDIDATE SPECIES

- **Proposal to list** published in *Fed. Register.*
- **Public comment** on proposed rule
- **Re-evaluation** of data & comments
- **Final rule** in *Fed. Register*
- **OR**
- **Withdrawal of Proposed Rule**

PETITION PROCESS FOR LISTING

- **Petition** submitted to FWS



- **90-Day Finding:**

- **Is there substantial info to indicate listing MAY BE WARRANTED?**

– NO  **Process Ends**

– YES  **Begin Status Review**

PETITION PROCESS

• Results of Status Review = 12-Month Finding

- Listing Not warranted: process ends
- Listing Warranted: Proposal to list
- Listing Warranted but Precluded: needs to be listed, but other candidate species have higher priority. (Priority reviewed annually)

PETITION PROCESS

● If Warranted:

- Proposed rule published in *Fed. Register*.
- Public comment on proposed rule
- Re-evaluation of data & comments
- Final rule in *Fed. Register*
- *or*
- Withdrawal of Proposed Rule



LISTING FACTORS

- **Present or threatened destruction of habitat or range**
- **Overutilization**
- **Disease or Predation**
- **Inadequacy of existing regulatory mechanisms**
- **Other natural or human-made factors**



LISTING DECISIONS

- **Must be based on the best scientific and commercial data available**
- **Must take into account data made available during status review**
- **Must consider on-going protective efforts (e.g., black-tailed prairie dog conservation plan)**



Listing Priority Guidance

- To prioritize listing workload
- 1. **Emergency rules** for species facing imminent risk to survival
- 2. **Final decisions** for proposed species
- 3. **New proposals for candidate species**
- 4. Proposals for species that are not currently candidate species (petitions).

Critical Habitat

• What is it?

- **Area that contains the physical & biological features essential to the conservation of the species**
- **May require special management or protection**
- **May include areas not currently occupied**

Critical Habitat

- **Supposed to be designated at time of listing as threatened or endangered unless:**
 - **Not prudent -or-**
 - **Not determinable**
- **Requires economic impact analysis (*of CH designation only*)**



Critical Habitat

- **Relatively few designations of critical habitat to date.**
- **FWS has lost several court cases**
- **FWS will now be preparing critical habitat designations for nearly all newly-listed species**

AND NOW - A REALITY CHECK!

- **Suit of the Week.....**
- **In 2001, FWS Listing Program driven entirely by lawsuits**
- **FWS will work only on species and critical habitat that are the subject of court-orders and settlement agreements.**
- **Vicious cycle?**



ESA Section 9

- **Prohibits “TAKE”** of endangered species by any person.
- **Federal regulations extended this prohibition to threatened species as well.**

Take Definition - *Wildlife*

- **“to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct.”**

Take Definition - **Plants**

- ⊗ “to remove and reduce to possession from, or maliciously damage or destroy on, areas under Federal jurisdiction
- ⊗ or
- ⊗ “to remove, damage, or destroy in knowing violation of State law”



Incidental Take

- **“Take resulting from, but not the purpose of, an otherwise lawful activity.”**

Legal Take

• Ways to legalize take:

• Section 7 (Consultation)

- Take must be incidental to legal activity
- Only when Federal involvement

• Section 10(a)(1)(A)

- Intentional take; e.g., scientific research

Legal Take

• **Section 10(a)(1)(B)**

- Incidental Take Permits for non-Federal entities

• **4(d) Rules**

Section 7 Consultation

- Requires Federal agencies **consult** with FWS to insure actions don't jeopardize listed species or adversely modify critical habitat
- If actions "**MAY AFFECT**" listed species, consultation is **REQUIRED**



Section 7 Consultation

- Applies when a Federal agency is involved
- Federal “nexus” via:
 - Federal funding
 - Federal permit or license
 - Federal agency carrying out the action

Consultation Types

• 2 Types:

- Informal
- Formal

Informal Consultation

- No strict timeframes for completion
- Consultation requirement met if FWS concurs that project “may affect, but is not likely to adversely affect” listed species
- Can continue process indefinitely until “not likely to adversely affect” level is achieved

Informal Consultation - Key Points

- Action agency must make the effect determination - FWS only concurs or not (w/in 30 days usually)
-
- Ends with:
 - concurrence of FWS, or
 - shift to formal consultation

Formal Consultation

- ⦿ Required when a Federal action is likely to adversely affect a listed species or critical habitat



Formal Consultation Timeframes

- Concludes 90 days after initiation
- Biological Opinion from FWS 45 days later

Biological Opinion

• Prepared by FWS

• Contains:

- Description of proposed action
- Status of species
- Environmental baseline
- Effects of the action (direct, indirect, cumulative, interrelated/ interdependent actions)
- **Conclusion (Jeopardy or not)**
- **Incidental Take Statement (not always)**
- Conservation recommendations

Biological Opinion - Incidental Take Statement

- Non-jeopardy opinions only
 - Only for animals
 - Only when take anticipated
- Exempts Federal agency/applicant from section 9 “take” prohibitions provided terms & conditions are complied with

Biological Opinion - Incidental Take Statement

⊙ Terms & Conditions:

- mandatory actions to minimize incidental take

Biological Opinion - Incidental Take Statement

- **Terms and Conditions:**
 - Must be clear, precise, enforceable
 - Only minor changes to project allowed
 - Include incidental take monitoring & reporting requirements

Jeopardy Biological Opinions

- Any action that would be expected to appreciably reduce the likelihood of survival and recovery of a listed species in the wild
- Very rare

Jeopardy Biological Opinions

- Reasonable & Prudent Alternatives required
 - consistent with purpose of action
 - within action agency's authority to implement
 - economically & technologically feasible
 - must not result in jeopardy



Section 10 Incidental Take Permits

- For activities involving incidental take where there is no Federal nexus
- Requires applicant to submit a **Habitat Conservation Plan (HCP)**

Habitat Conservation Plan

• **Must include:**

- **Impacts to listed species**
- **Measures to monitor, minimize, and mitigate impacts**
- **Alternatives considered**
- **Funding mechanisms**



Habitat Conservation Plan

- **NEPA** document may be needed - applicant may need to prepare
- **Public review** of Permit application
- Can cover small or large areas (even a river basin or a State)
- **Single or multiple species**

4(d) Rules

- **Section 4(d) of the ESA allows the Secretary of Interior to issue regulations for threatened species for their conservation**
- **4(d) rules may provide exemptions to the Section 9 prohibitions on take.**
- **Examples:**
 - **Killing wolves in the act of killing livestock; Grizzly bears - self defense)**

Recovery

⊙ **ULTIMATE GOAL OF ESA:**

- Recover species to levels where protection under the ESA is no longer necessary.

⊙ **What is Recovery?**

- The process by which the decline of a listed species is arrested or reversed, and threats reduced so that its survival in the wild can be ensured.

Recovery Plans

- **Required by the ESA (unless no conservation benefit)**
- **What is a Recovery Plan?**
 - Documents that delineate, justify, and schedule management and research actions necessary to recover species.

Recovery Plans

- FWS policy is to complete recovery plans **within 2^{1/2} years** of date of listing.
- Plans may be prepared by a FWS biologist, or a Recovery Team.
- FWS policy requires **involvement of local govt., private orgs., and affected citizens.**



Recovery Plans

- **The public is invited to comment on draft recovery plans to help reduce conflicts between species conservation and the affected community.**
- **All comments are reviewed and addressed in the final plan.**



Recovery Implementation

- Intended to be a **partnership effort** between Federal, State, local agencies, researchers, conservation organizations, landowners and individuals.
- **Cooperation & coordination** among all parties is essential to an effective recovery program
- **Chronically under-funded**

Candidate Conservation Agreements w/ Assurances

- **Voluntary Agreements**
- **For Candidate/Sensitive Species**
- **Landowners remove threats to species**
- **If species listed, no additional regulatory obligations on landowner**
- **Intended to preclude the need to list species.**



Safe Harbor

- **If landowners do positive things for listed species, no additional restrictions applied as a result.**
- **Can incidentally “take” species to get back to baseline.**
- **Removes dis-incentive to do good things for listed species.**

END OF PRESENTATION

