



Endangered Species Listings

Frequently Asked Questions

What are the impacts of a Federal listing to private landowners and private property?

The Endangered Species Act (ESA) protects endangered and threatened species and their habitats by prohibiting the “take” of listed animals and the interstate or international trade in listed plants and animals, including their parts and products, except under Federal permit. Such permits generally are available for conservation and scientific purposes.

In addition, section 7 of the ESA requires that other Federal agencies “consult” with the Fish and Wildlife Service (FWS) to ensure that their actions are not likely to jeopardize the continued existence of a listed species or adversely modify its habitat. Thus, Federal agencies must consult with the FWS about an endangered or threatened species for an activity that occurs on private land where a Federal agency funds, authorizes or carries out an activity. Private landowners who rely on Federal lands for activities such as grazing, energy development or recreation could also be affected.

What is “Take”?

The ESA makes it unlawful for a person to take a listed animal without a permit. Take is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct.” The take prohibition encompasses significant habitat modification or degradation that

results in the direct killing or injury to listed animal species. Listed plants are not protected from take, although it is illegal to collect or maliciously harm them on Federal land. Protection from commercial trade and the effects of Federal actions do apply for plants. In addition, States may have their own laws restricting activity involving listed species.

What about activities on property owned by the state, county, or municipalities?

Like private landowners, state agencies and counties are subject to the ESA’s prohibitions against the take of a listed species. Therefore, these public entities may obtain a permit for such take through the same mechanisms described for private landowners.

If an animal is placed on the Federal list of threatened or endangered species, what activities could be impacted?

Any activity that has the potential to take an animal species listed under the ESA may be impacted. Some possible examples include: development, infrastructure construction, recreational activities, grazing, energy development, vegetation control/management, and land-use changes or conversions.

Are plants treated differently than animals under the ESA?

Yes. The ESA does not protect plants unless there is a Federal nexus. Therefore, activities on private lands that do not have Federal involvement are not impacted. Plants may not be removed from lands under Federal jurisdiction, and activities with a Federal nexus have the consultation requirement described above.



Sage-grouse crossing sign / USFWS



Service biotechnician Jason Marsh holds a male arctic grayling collected from Red Rock Creek / USFWS

How is a Threatened listing different from an Endangered listing?

Essentially, threatened status doesn't require the maximum protections of the ESA as an endangered status would. A threatened listing allows more management flexibility.

The ESA prohibits all activities that would take an animal species listed as endangered, unless exempted or permitted by the FWS. In contrast, for species listed as threatened, the ESA gives the FWS authority to tailor the take prohibitions to the conservation needs of the species. These special rules may provide important flexibility to address species-human conflicts. For example, the FWS has 4(d) rules in place for some species (e.g., the Preble's meadow jumping mouse) that allows take associated with routine farming and ranching operations because that take is not a significant threat to the species, and because maintaining working farms and ranches on the landscape is important for recovery of the species.

There is also increased management flexibility for states. State natural resource management agencies in a cooperative agreement with the FWS may take individuals of a threatened

species in pursuit of conservation programs intended to benefit the species. Under a cooperative agreement, States may also take an endangered species for conservation purposes unless the action is likely to kill or disable the animal. States may also apply for an ESA scientific permit for take that might occur during research or conservation activities for the species.

What can be done to avoid or mitigate impacts on private property?

In many cases, private lands provide high quality habitat for threatened and endangered species and are important to the recovery of listed species. The FWS has several voluntary programs that promote recovery of listed species and provide participating landowners assurances that their management activities will not be impacted. Most of these agreements result in an incidental take permit from the FWS, which permits take from otherwise lawful activities on non-Federal lands. These programs are summarized below:

Safe Harbor Agreements encourage voluntary conservation for listed species to promote recovery on non-Federal lands. The program's

incentives are assurances to property owners and take authorization for routine land uses that no additional commitments or restrictions will be required for the species. These voluntary agreements also allow the landowner to return the property back to baseline conditions, if desired.

Candidate Conservation Agreements with Assurances provide incentives for non-Federal property owners to conserve candidate species, with the goal of reducing the need to list a species. These include assurances that no commitments or restrictions will be required even if the species becomes listed. It also provides "take" authorization for routine land uses if the species becomes listed.

Habitat Conservation Plans (HCP) can be developed to obtain permits to authorize incidental "take" from non-Federal activities. These plans specify measures required to minimize and offset the impacts of such "take". With proper implementation of the plan, the No Surprises Policy assures participating landowners that the Service will not impose additional commitments or restrictions beyond those agreed to in their HCPs, even if circumstances change.

Conservation Banks are permanently protected privately or publicly owned lands that are managed for endangered, threatened, and other at-risk species. A banker earns credits for conserving the



Preble's Meadow Jumping Mouse / USFWS

species' habitat and may sell them to developers who incur debits when impacting those species elsewhere.

What else can be done to conserve listed species?

Consider enrolling your property in conservation programs such as conservation agreements, conservation easements, and similar tools (see <http://www.fws.gov/angered/landowners/landowner-tools.html>). These programs often benefit the species as well as the landowners, agencies, and other interests, particularly when such agreements are completed prior to listing of a species. The Service works with landowners, Tribes, and Federal and State agencies to forge voluntary conservation agreements that benefit proposed and other species-at-risk. We provide technical assistance on designing and implementing conservation actions to address threats to these species.

What funding is there to help landowners conserve listed species?

The Cooperative Endangered Species Conservation Fund (aka "Section 6 Grants") is a grant program for State natural resource agencies to conserve listed and candidate species. Two types of grants (Recovery Land Acquisition and HCP Land Acquisition) provide money to States or third parties to acquire land or conservation easements from willing sellers to help recover the species. HCP Assistance Grants help fund the development of HCPs.

What is critical habitat?

Critical habitat is a term in the ESA that identifies geographic areas essential for the conservation of a threatened or endangered species. The ESA defines "conservation" as the actions leading towards the eventual recovery of a species to the point where it is no longer threatened or endangered. A critical habitat designation requires federal agencies to consult with the Service on any of



Fremont County rockcress / USFWS

their actions that may affect critical habitat in designated areas. The Service can then recommend ways to minimize any adverse effects. It imposes no requirements on state or private actions on state or private lands where no federal funding, permits or approvals are required.

Does a critical habitat designation mean an area is considered a wildlife refuge or sanctuary?

The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve or other conservation area. It does not allow government or public access to private lands.

Why should I care about endangered and threatened species?

The ESA provides a critical safety net for America's native fish, wildlife and plants. This landmark conservation law has prevented the extinction of hundreds of imperiled species across the nation and promoted the recovery of many others. The health of threatened and endangered species is strongly linked to our own well-being. Millions of Americans depend on habitat that sustains these species – for clean air and water, recreational opportunities and for their livelihoods. By taking action to protect imperiled native

fish, wildlife and plants, we can ensure a healthy future for our community and protect treasured landscapes for future generations.

Where can I find out more?

For more information about the Endangered Species Act, visit the Service's web site at <http://www.fws.gov/angered/>

U.S. Fish and Wildlife Service
PO Box 25486
Denver Federal Center
Denver, Colorado 80225

For more information visit:
<http://www.fws.gov/angered/>

For State relay service
TTY / Voice: 711

U.S. Fish & Wildlife Service
<http://www.fws.gov>

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