

Frequently Asked Questions Regarding the FWS Proposal to List the Dunes Sagebrush Lizard

Q. What is the Endangered Species Act?

A. The Endangered Species Act (Act) is a federal law passed by Congress in 1973. The purpose of the Act is to protect and recover imperiled species and the ecosystems upon which they depend. Under the Act, species may be listed as either endangered or threatened. “Endangered” means a species is in danger of extinction throughout all or a significant portion of its range. “Threatened” means a species is likely to become endangered within the foreseeable future. All species of plants and animals, except insect pests, are eligible for listing as endangered or threatened.

Q. How are species designated for protection?

A. Section 4 of the Act requires species to be listed as endangered or threatened solely on the basis of their biological status and threats to their existence. When evaluating a species for listing, the Fish and Wildlife Service (Service) considers and evaluates the following five factors;

- damage to, or destruction of, a species’ habitat;
- overutilization of the species for commercial, recreational, scientific, or educational purposes;
- disease or predation;
- inadequacy of existing protection; and
- other natural or manmade factors that affect the continued existence of the species.

When one or more of these factors threatens the survival of a species, the Service takes action to protect it. In making listing decisions, the Service uses the best available scientific and commercial data and conducts independent peer reviews of each rule.

Q. What protections would apply to the dunes sagebrush lizard if it is listed under the Act?

A. Endangered species cannot be purchased or sold in interstate or foreign commerce without a federal permit. Endangered animal species cannot be killed, hunted, collected, injured, or otherwise subjected to "harm." Section 7 of the Act requires that federal agencies ensure that actions they approve, fund, or carry out do not jeopardize the continued existence of a listed species or destroy its critical habitat. In addition to the above, endangered species benefit from the recovery planning process, which results in a recovery plan that outlines actions that are needed to recover the species such that it no longer requires protection under the Act. The

Service writes and implements these plans in partnership with the species experts; other Federal, State, and local agencies; Tribes; nongovernmental organizations; academia; and other stakeholders.

Q. Where does this lizard live?

A. The dunes sagebrush lizard (lizard) is a small, light brown lizard found in southeastern New Mexico and adjacent west Texas. This lizard is a habitat specialist native to a small area of shinnery oak dunes extending from the San Juan Mesa in northeastern Chaves County, Roosevelt County, through eastern Eddy and southern Lea Counties in New Mexico. In Texas, habitat is found in a narrow band of shinnery oak dunes in Gaines, Ward, Winkler, and Andrews Counties, with lizard occurrences in Andrews, Ward, and Winkler Counties.

Q. What is being done now to protect the lizard?

A. In 2008, the Service, Bureau of Land Management (BLM), and the Center for Excellence partnered to develop a Candidate Conservation Agreement (CCA) and Candidate Conservation Agreement with Assurances (CCAA) for the conservation of the lesser-prairie chicken and the lizard. These agreements provide an effective mechanism for conservation by allowing oil and gas, and the ranching industry to participate and have their activities covered under this umbrella agreement. The CCA covers activities on federal lands, and the CCAA covers activities on non-federal lands. Participating cooperators from the oil and gas industry follow conservation measures at each drill site, and also pay into a conservation fund that is used to restore habitat for the lesser-prairie chicken and the lizard. There are 12 private land owners and 4 oil companies enrolled in the program, with more agreements being developed. Although the lizard is proposed for listing, the Service encourages landowners and oil, gas, and ranching operators to participate in these conservation programs because actions taken under this agreement are important for the conservation of the species.

Q. What are CCAs and CCAAs?

A. CCAs are voluntary conservation agreements between the Service and one or more public or private parties. The Service works with its partners to identify threats to candidate species, develop the measures needed to address the threats and conserve the species, identify willing landowners, develop agreements, and implements and monitors the effectiveness of the conservation actions.

CCAAs expand on the success of traditional CCAs by providing non-federal landowners with additional incentives for engaging in voluntary proactive conservation through assurances that limit future conservation obligations. This tool was developed to address landowner concerns about conserving a species that may become listed, such as the lizard, and then being faced with potential increased regulatory restrictions. This program provides assurances to private

landowners that if they implement the conservation measures outlined in the CCAA, they will not be subject to additional restrictions if the species becomes listed under the Act.

Q. Will listing the lizard affect oil and gas development and ranching in southeastern New Mexico and southwest Texas?

A. Federal agencies, such as the BLM and the Natural Resources Conservation Service, will be required to consult with the Service on projects that may affect the lizard. During consultation the “action” agency receives a “biological opinion” or concurrence letter addressing the proposed action. In the vast majority of cases, projects proceed by implementing conservation measures developed to minimize effects to listed species. Those oil and gas companies, and private ranchers enrolled in the CCAA receive regulatory assurances or, a level of certainty if enrolled in the CAA, that if the lizard is listed, they will not be required to do anything beyond what is specified in their agreement. Once a species is listed, enrollment in the CCA/CCAA is no longer possible for that species. Those private landowners not enrolled in the CCA/CCAA that have the potential to take a listed species have the option of developing a Habitat Conservation Plan (HCP) to support an application for a section 10(a)(1)(B) incidental take permit. Incidental take is defined as take that results from, but is not the purpose of, carrying out an otherwise lawful activity. The term “take”, as defined by the Act, means “ to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct”. Overall, we anticipate that effects to oil and gas and ranching operations should be minimal, but there may be delays due to the time required to complete section 7 consultations or the HCP process. There should be no significant time delays for those participating in the CCA/CCAA.

Q. Will the proposed listing deter industry from enrolling in the CCA/CCAA?

A. We do not intend for the proposed rule to discourage efforts to enroll others in the program. One of the Service’s goals is to facilitate cooperative conservation of species that are candidates for listing. The collaborative approach between the Service and the BLM led to the development of these umbrella agreements. It is a novel approach in that it allows both private landowners and operators, such as oil and gas companies and ranchers, to participate in the conservation of the lizard and lesser-prairie chicken on both federal and non-federal lands. If the listing cannot be avoided, the incentives to those that participate include assurances or, under the CCA, a level of certainty, that they can continue to manage as outlined in their agreement with no additional requirements. The benefits of early conservation include maximizing management options for landowners and the species, and earlier recovery potential.

Q. Why are the conservation efforts undertaken in the CCA/CCAA not enough to prevent the lizard from being listing?

A. The Service determined that the lizard was warranted for listing in 2001 and reviewed and confirmed that finding annually, as published in our annual Candidate Notice of Reviews. The

Act states that the determination to list a species must be made *solely* on the basis of the best scientific and commercial data available and an analysis of the factors outlined above. The Service is required by the Act to demonstrate that we are making expeditious progress to add candidate species to the list. Also, only three companies had enrolled in the CCA/CCAA program at the time of publication of the proposed rule. Thus, while we want to allow time for the agreements to provide further conservation for the lizard, as a high priority candidate species we were required to address the listing status of the lizard when funding and resources became available. The Service's intent to write a proposed rule to list the lizard when funding became available was communicated during stakeholder and public meetings held during the development of the CCA/CCAA. The Service cannot guarantee listing will never be necessary for a candidate species.

Q. Why is the Service reopening the comment period?

A. We have had multiple requests for public hearings in New Mexico and Texas, along with requests to extend the comment period. We are reopening the comment period for 30 days, starting April 7, 2011. The comment period will close on May 9, 2011. Two public hearings, one in Midland, Texas, and the other in Roswell, New Mexico, will be held during this time. The Service is limited in the length of time available for receiving public comment. The law requires that we make a final determination within one year of a proposal; therefore we are unable to have a more substantial extension of the public comment period.

Q. How do I provide information and comments to the Service?

A. Information supplied by either individuals or groups during the comment period will be essential in determining whether to add the dunes sagebrush lizard to the list the endangered wildlife. The Service completed scientific peer review of its listing proposal during the first comment period. All comments collected during the comment period, either in writing or at a public hearing, will be consider and addressed in a final determination anticipated in December, 2011.

Written comments can be submitted at a public information session or public hearing, or electronically at <http://www.regulations.gov>, or by mail to Public Comments Processing, Attn: Docket FWS-R2-ES-2001-0041; Division of Policy and Directives Management; U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., Ste. 222, Arlington, VA 22203. Comments are due by May 9, 2011.

Q. What are the public meetings? And when and where will they be held?

A. Two different public meetings will be held in Midland, Texas and in Roswell, New Mexico. At each venue, an information session will be held from 3:30 to 5 p.m. during which interested individuals are encouraged to speak with and ask questions of Fish and Wildlife Service

representatives. The information session will be followed by a formal public hearing from 6:30 to 8 p.m. The purpose of the formal hearing is to provide individuals an opportunity to have their oral comments entered into the administrative record; as such, there will be no opportunity for dialogue at the formal hearing.