

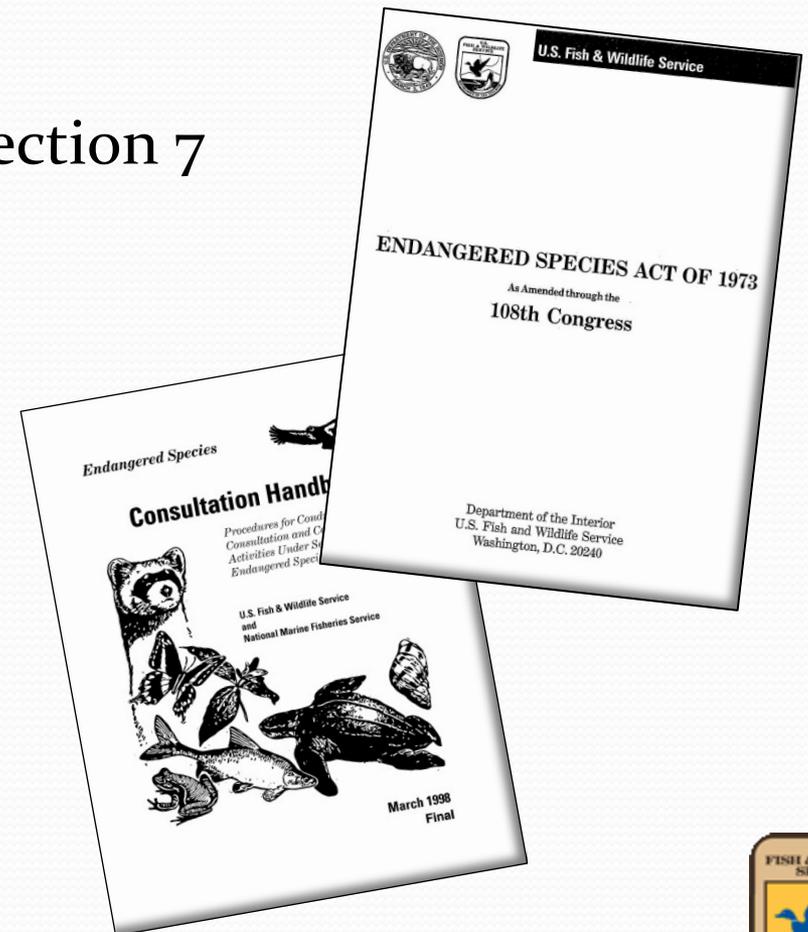
Endangered Species Act

And how it applies to the
Mexican spotted owl in Utah



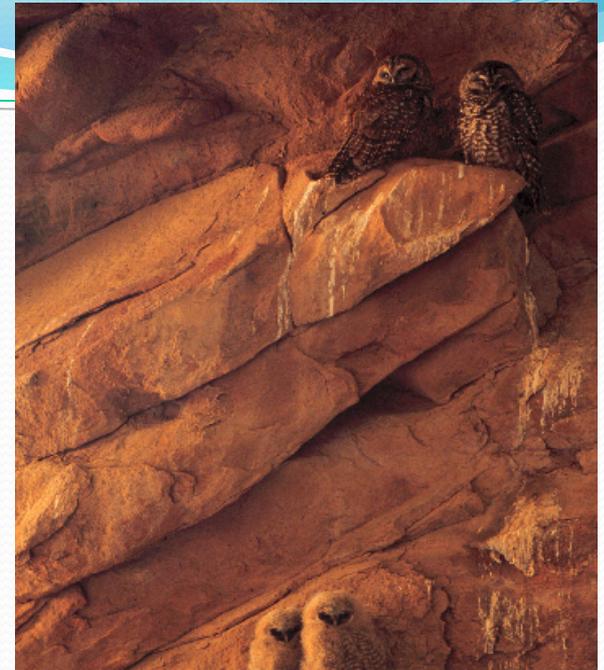
Laws, Regulations and Guidelines

- Statutory Authority
 - Endangered Species Act – Section 7
- Regulations
 - 50 CFR 402 - Consultation
- Policy
 - Consultation Handbook



Federal Status

- Species are added to the list
 - We are petitioned by interested parties
 - We initiate
- Listing Process
 - 90 days from receiving petition
 - 12 month finding – 12 months from receiving petition
 - Proposed / final listing rule – final rule is 12 months after proposed
 - Proposed / final designation of critical habitat – proposed rule due 12 months after final species rule / final rule due 12 months after proposed
- Listing status
 - Threatened
 - Endangered
 - Candidate



Federal Status

- January 6, 1989 (54 FR 554)
 - Category 2 candidate species
- December 22, 1989
 - Petitioned by Dr. Silver to list as either endangered or threatened
- February 27, 1990
 - Substantial finding
- February 20, 1991 (56 FR 14678, April 11, 1991)
 - Warranted
- November 4, 1991 (56 FR 56344)
 - Proposed rule to list as threatened without critical habitat
- March 16, 1993 (58 FR 14248)
 - Final rule to list as threatened species without critical habitat
- June 23, 1993 and August 16, 1993
 - Petitioned twice to delist – not substantial



Federal Status

- 5-Factor Analysis
 - Timber harvest and fires
 - Increased predation associated with habitat fragmentation
 - Lack of adequate protective regulations
- Critical Habitat – although prudent, was not determinable



Critical Habitat

- Section 3(5)(A) defines Critical Habitat as
 - (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (*Primary Constituent Elements*)
 - (I) essential to the conservation of the species and
 - (II) that may require special management considerations or protection and;
 - (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.



Critical Habitat

- February 14, 1994
 - Dr. Silver and others filed a lawsuit for our failure to designate critical habitat
- October 6, 1994
 - the court ordered us to publish a proposed designation of critical habitat
- December 7 1994 (59 FR 63162)
 - Proposed Rule designating critical habitat
- June 6, 1995 (60 FR 29913)
 - Final Rule designating critical habitat



Critical Habitat

- March 4, 1997
 - Federal District Court in New Mexico set aside our final rule designating critical habitat for the owl because we did not comply with NEPA
- March 25, 1998 (63 FR 14378)
 - Removed critical habitat designation



Critical Habitat

- March 13, 2000
 - Southwest Center for Biological Diversity and Dr. Silver were plaintiffs
 - District court ordered us to propose critical habitat, with NEPA
- February 1, 2001 (66 FR 8530)
 - Excluded all National Forest Service lands in Arizona and New Mexico as well as some Tribal lands
 - 1.9 million ha (4.6 million ac)



Critical Habitat

- January 13, 2003
 - Center for Biological Diversity filed a complaint
 - Court ordered us to repropose critical habitat
- August 31, 2004 (69 FR 53182)
 - 3.5 million ha (8.6 million ac)
 - Utah has 911,669 ha (2,252,857 ac)
 - Only on Federal land
 - Utah has BLM, NPS, and FS
 - No Tribal lands are designated



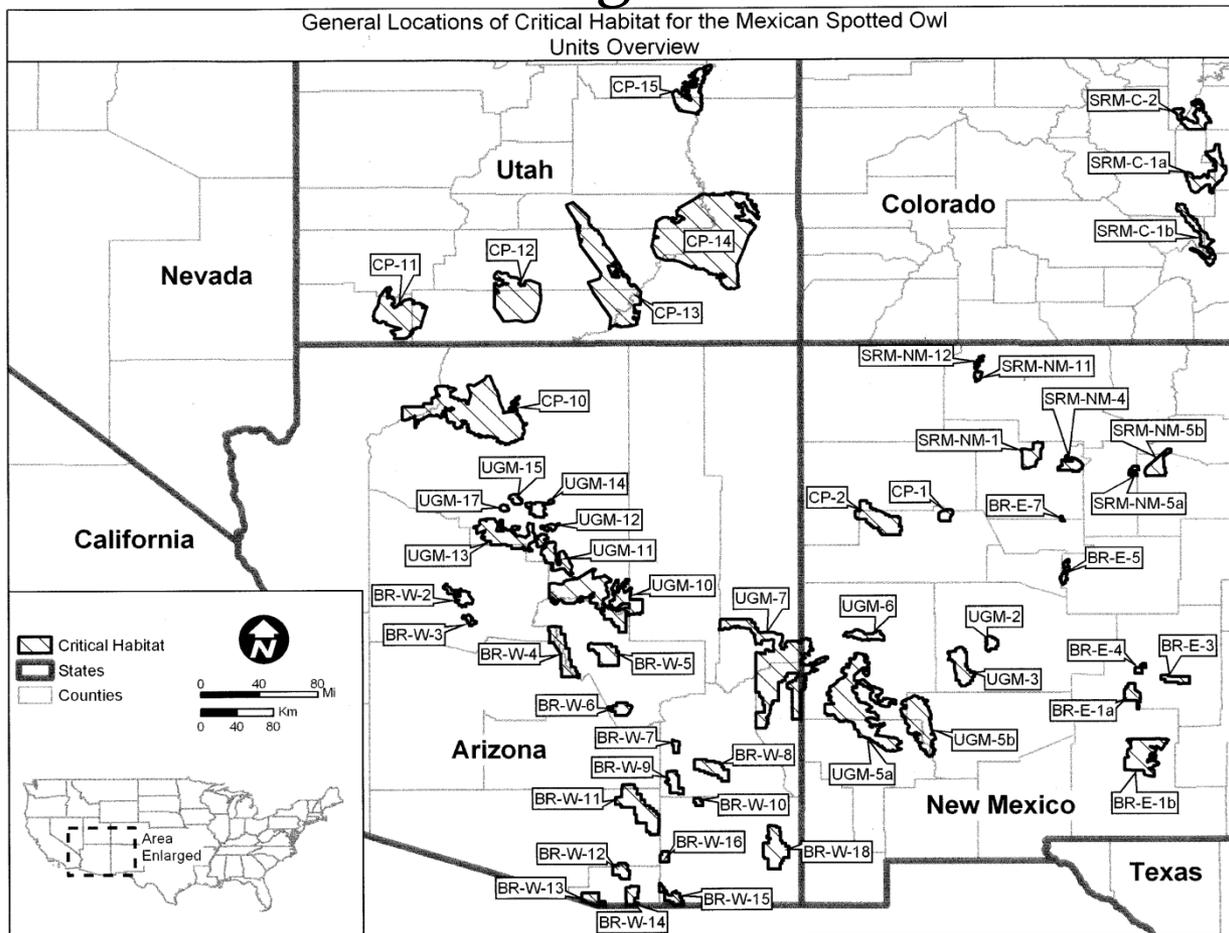
Critical Habitat

- Primary constituent elements related to canyon habitat include one or more of the following:
 - (1) presence of water (often providing cooler and often higher humidity than the surrounding areas);
 - (2) clumps or stringers of mixed conifer, pine-oak, pinyon-juniper, and/ or riparian vegetation;
 - (3) canyon wall containing crevices, ledges, or caves; and
 - (4) high percent of ground litter and woody debris.



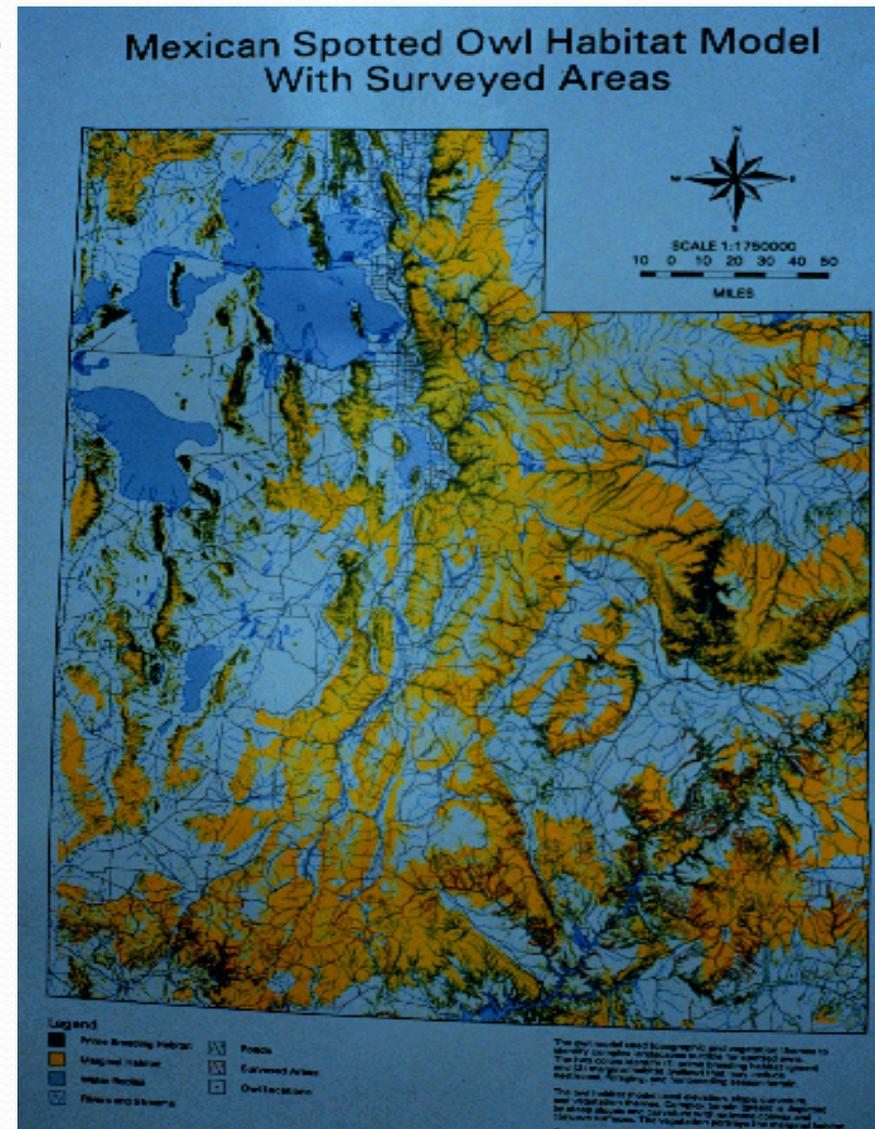
Critical Habitat

- <http://criticalhabitat.fws.gov/crithab/>

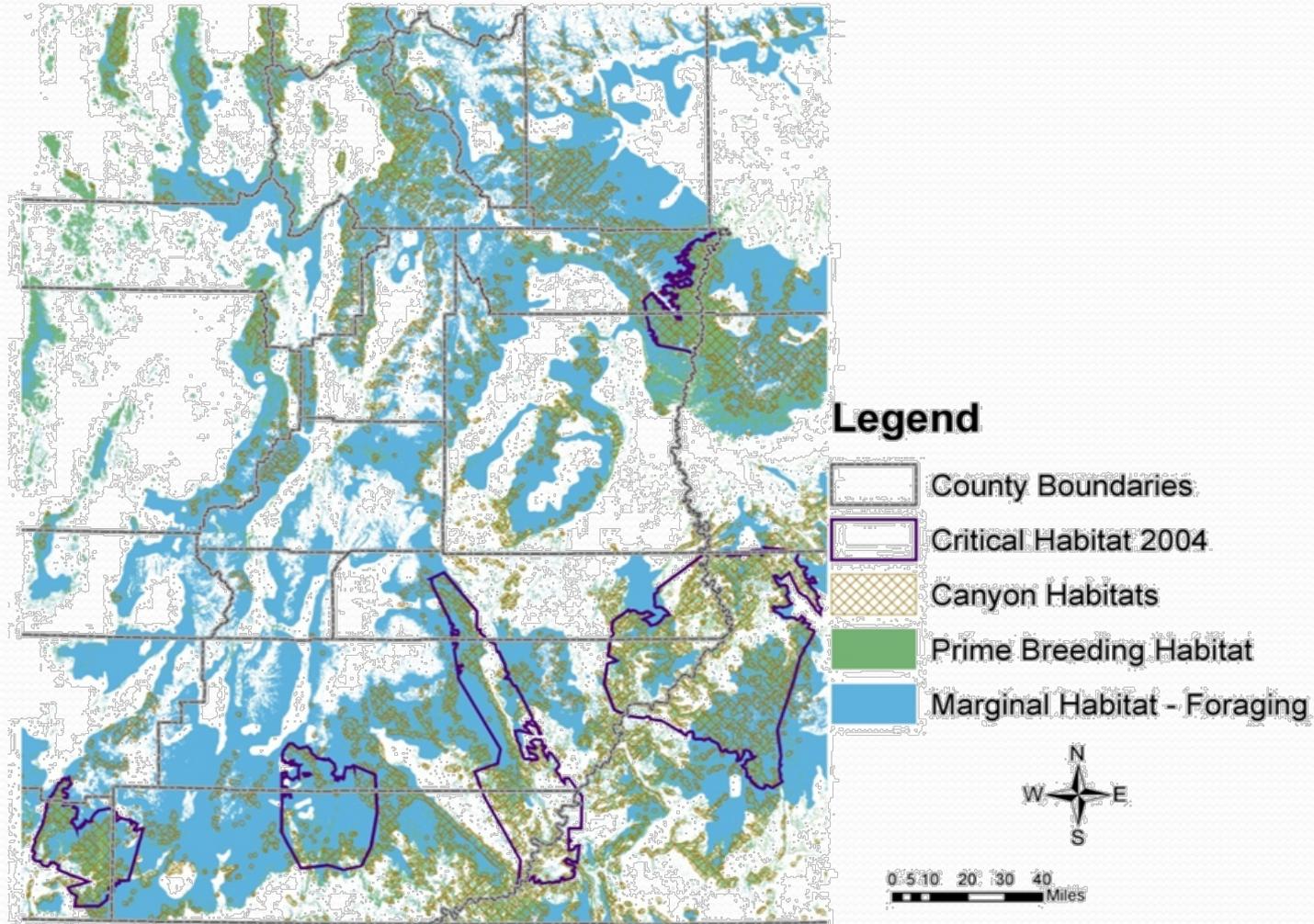


Modeled Habitat

- Spotskey 1997
 - Based on vegetation, topographic and geologic parameters
 - Depicts possible range of potential habitat
- Spotskey and Willey 2000
 - Refined 1997 model to better define nesting and roosting habitat (digital elevation model).
- www.fws.gov/utahfieldoffice



Critical and Modeled Habitat



Habitat Parameters – Canyon PCE's

- Presence of water-microclimate
- Tree cover/type
- Canyon wall height
- Rock faces contain crevices, ledges, or caves
- Lots of litter/woody debris–food supply



Endangered Species Act

- Section 9 Take Prohibitions Apply
- Section 7 Consultation – Federal land owners
 - 7(a)(1)
 - 7(a)(2)
- Section 10 – Research Permits as well as exemptions to non-Federal land owners
- Section 6 – Funding to the State
- Section 4 – Recovery Plan



Section 9

- Prohibits the taking of any federally endangered or threatened animal species.
- Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.



Section 9

- **Harm** includes significant habitat modification or degradation that results in death or injury to listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.
- **Harass** is defined as intentional or negligent actions that create the likelihood of injury to listed wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering.



Section 7(a)(1)

- All Federal agencies shall use their authorities in the furtherance of the purposes of this Act by carrying out programs for the conservation of endangered and threatened species.
- Is where agencies are guided to conserve.



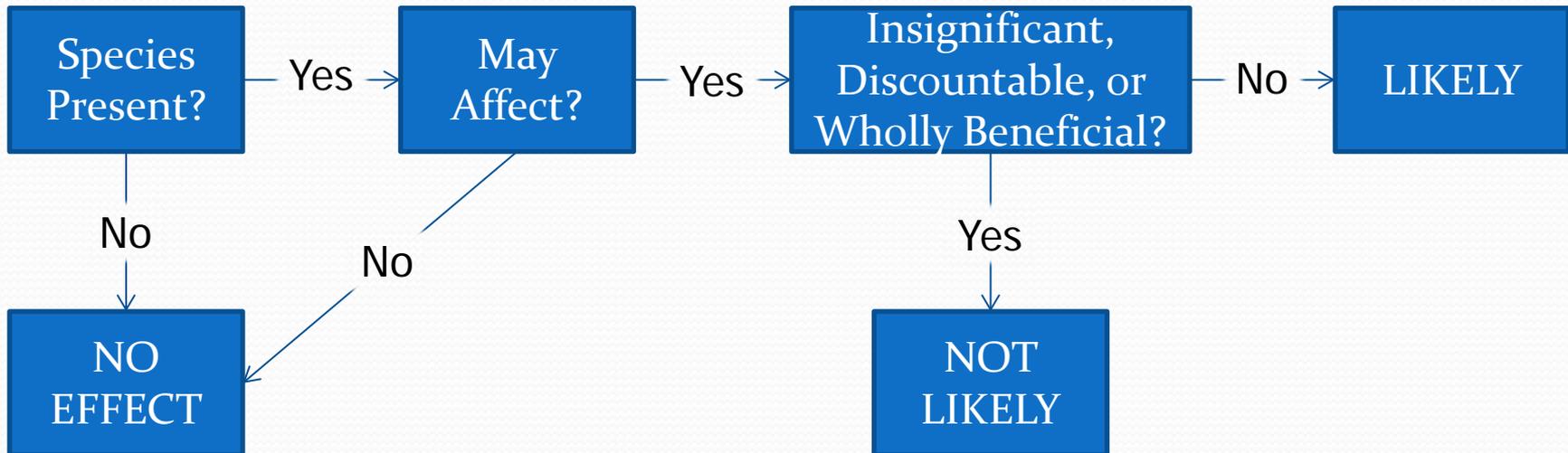
Section 7(a)(2)

- Each Federal agency must, in consultation with the Service, ensure that any action funded, authorized, or carried out by the agency is not likely to
 - jeopardize the continued existence of any endangered or threatened species or
 - result in the destruction or adverse modification of critical habitat.
- Is where conservation is measured against impacts.



Section 7 Consultation

- Federal agency considers the effects of their actions on listed species.

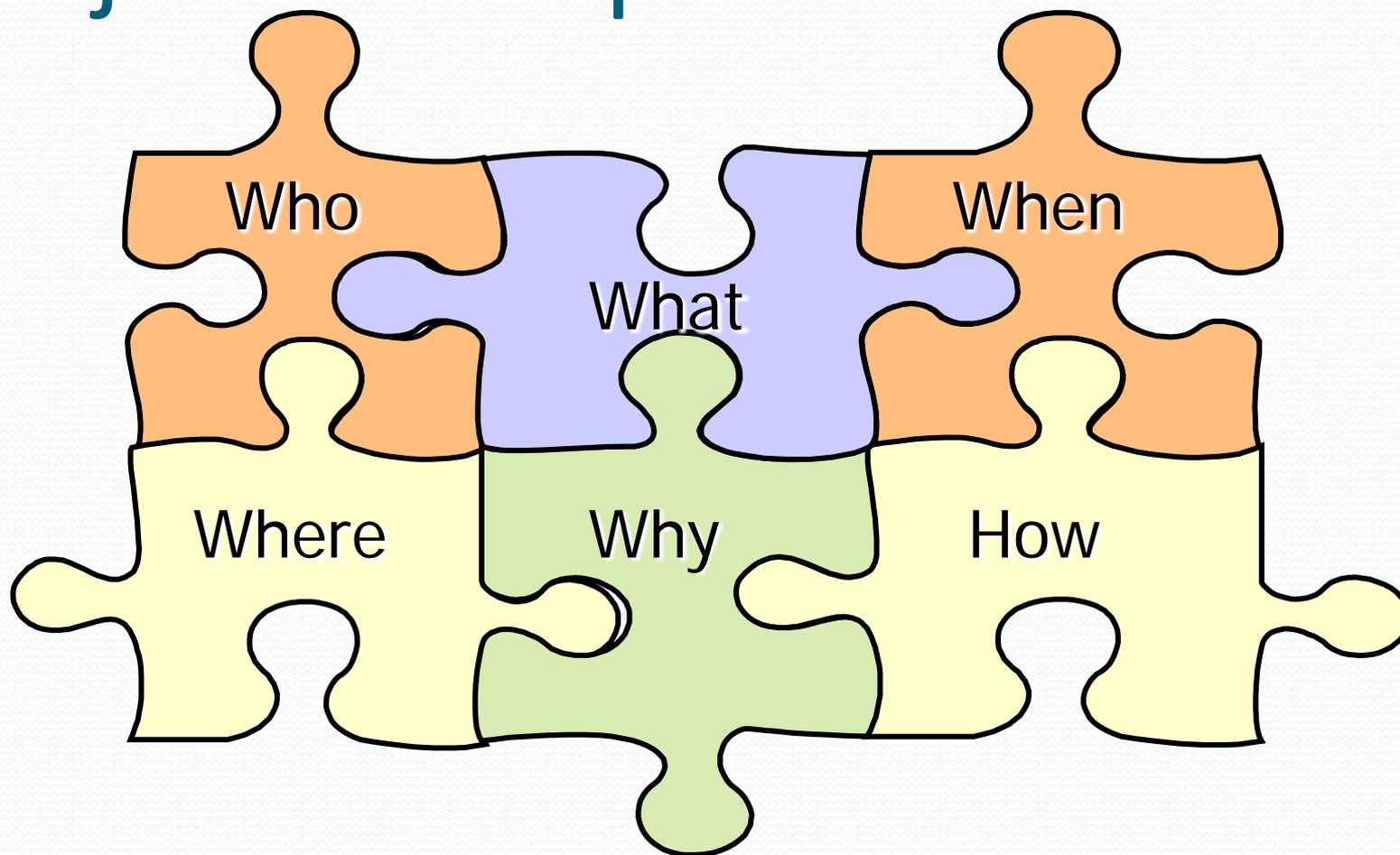


Section 7 Consultation

- What we need:
 - A Project Description
 - A description of the specific area affected by the action (Action Area)
 - A description of listed species or critical habitat that may be affected (Effects to Analyze)
 - A description of the manner in which the action may affect any listed species or critical habitat and an analysis of cumulative effects
 - Relevant reports, including any environmental impact statement, environmental assessment, or biological assessment prepared
 - An other relevant available information on the action, the affected listed species, or critical habitat.



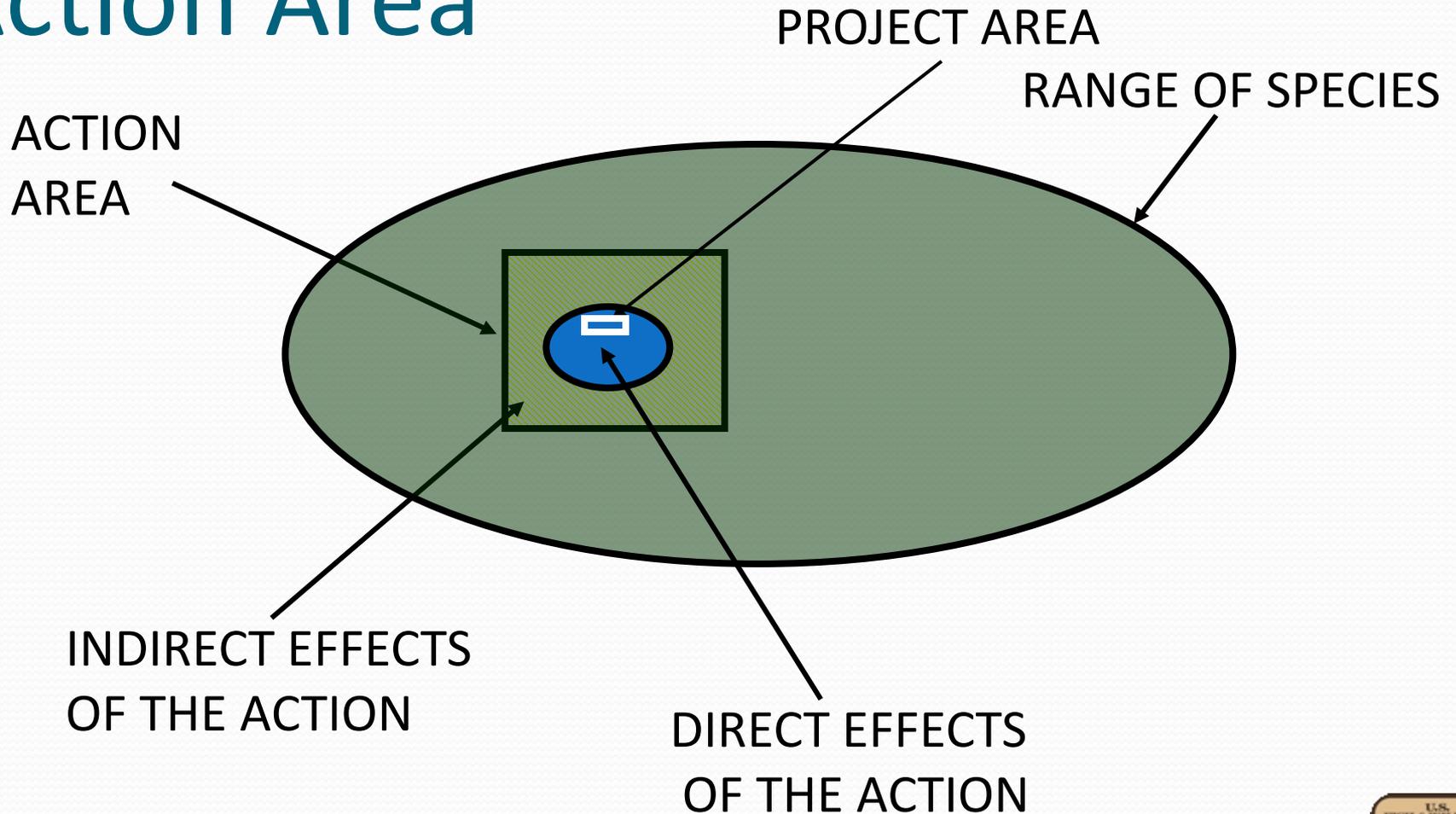
Project Description



Includes any measures you will implement to avoid adverse effects



Action Area



Effects to Analyze

- Beneficial Effects
- Direct Effects
- Indirect Effects
- Effects of Interrelated Activities
- Effects of Interdependent Activities
- Cumulative Effects



Evaluating Proposed Projects

- Types of action
 - Permanent
 - Carries on for more than one year
 - Permanent habitat loss- Road
 - Permanent structures
 - Temporary
 - Completed outside of breeding season
 - No permanent habitat loss

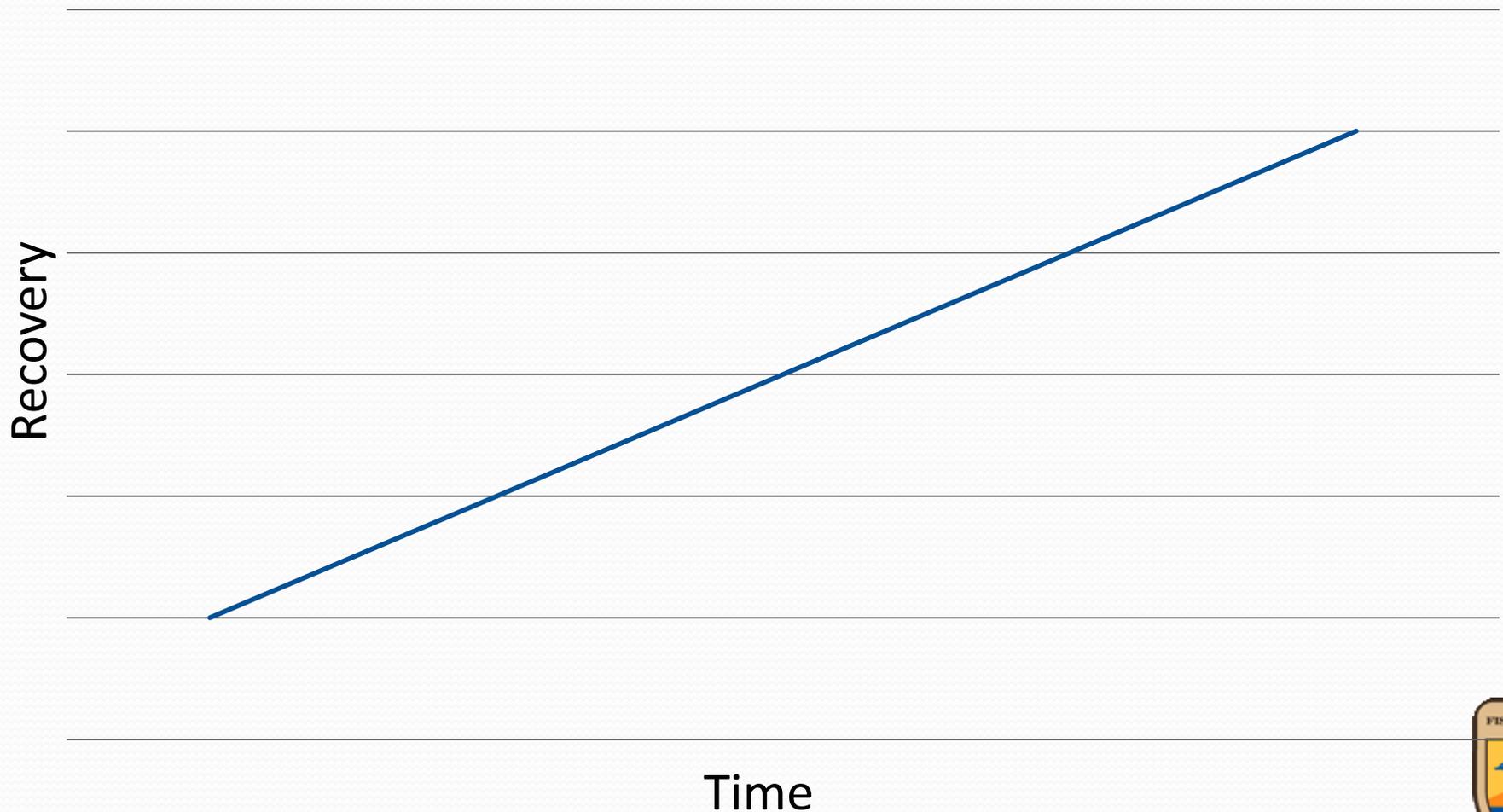


Section 7 Consultation

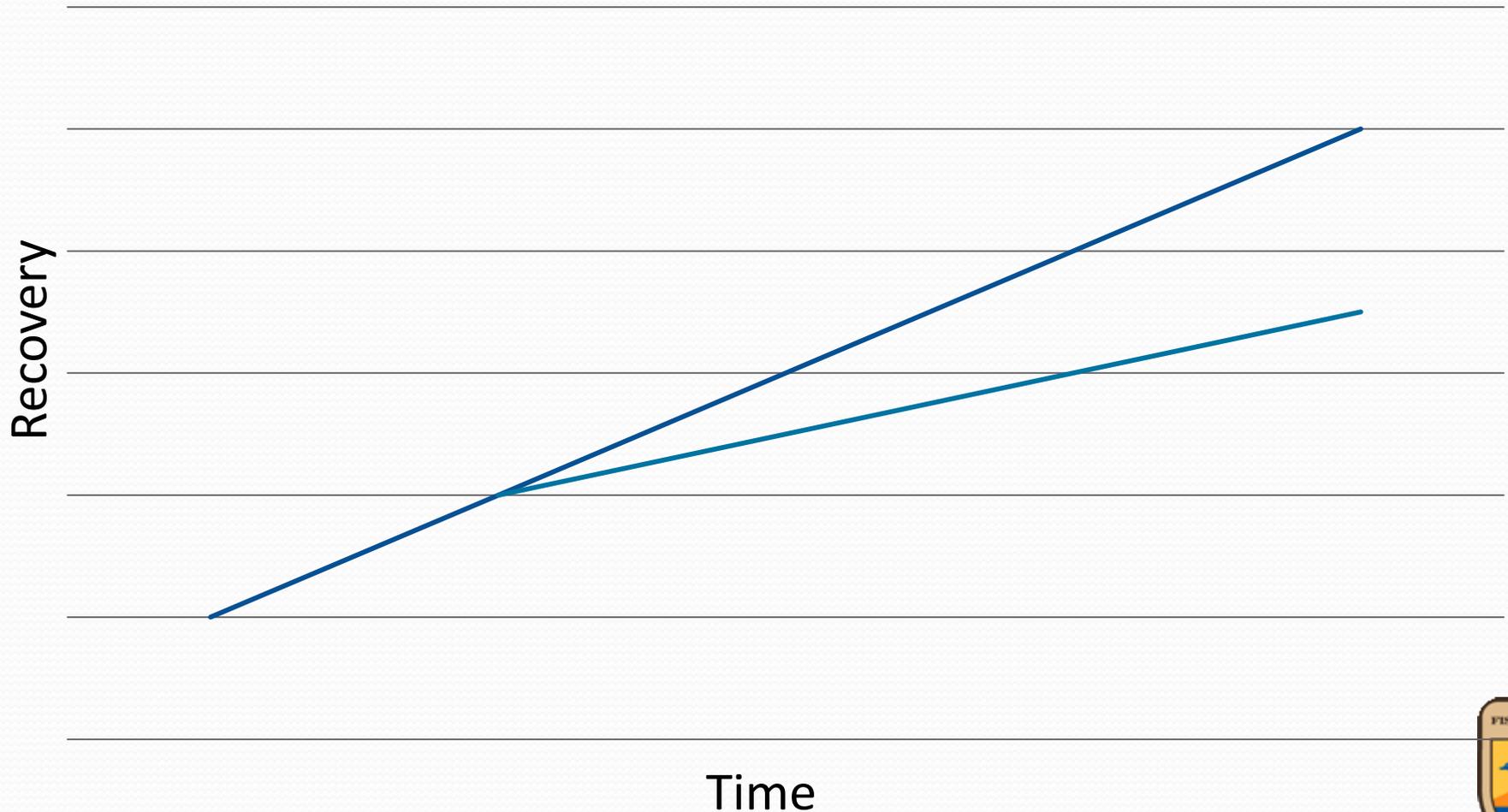
- What we do:
 - We assist other agencies in meeting their responsibilities under the Act.
 - Review all information provided by action agency.
 - Evaluate status of species and critical habitat.
 - Evaluate effects of the action.
 - Formulate a biological opinion, regarding jeopardy and adverse modification of critical habitat.
 - Discuss with the action agency the basis of the opinion. (50 CFR § 402.12(g)).



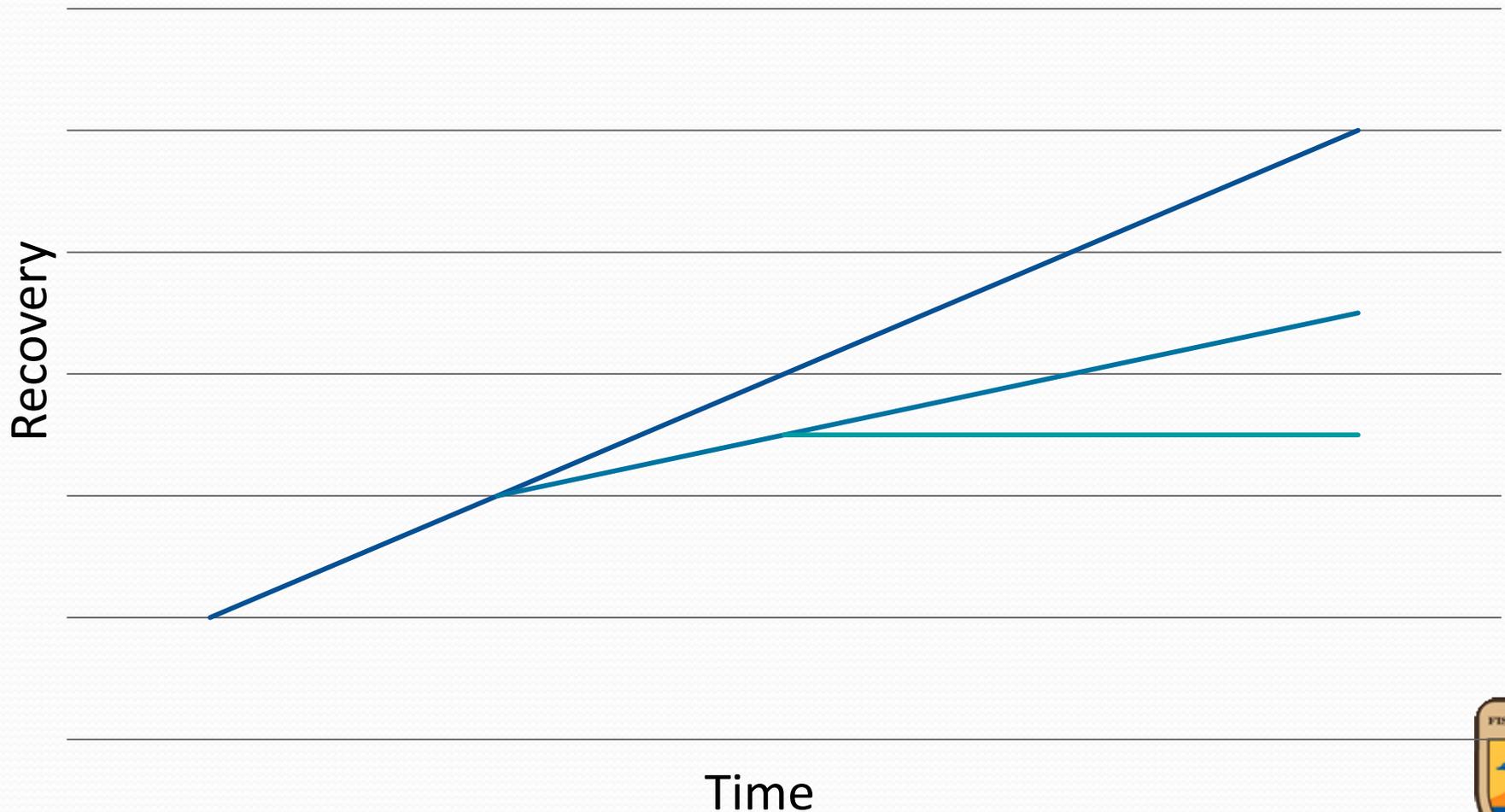
Death by a Thousand Cuts



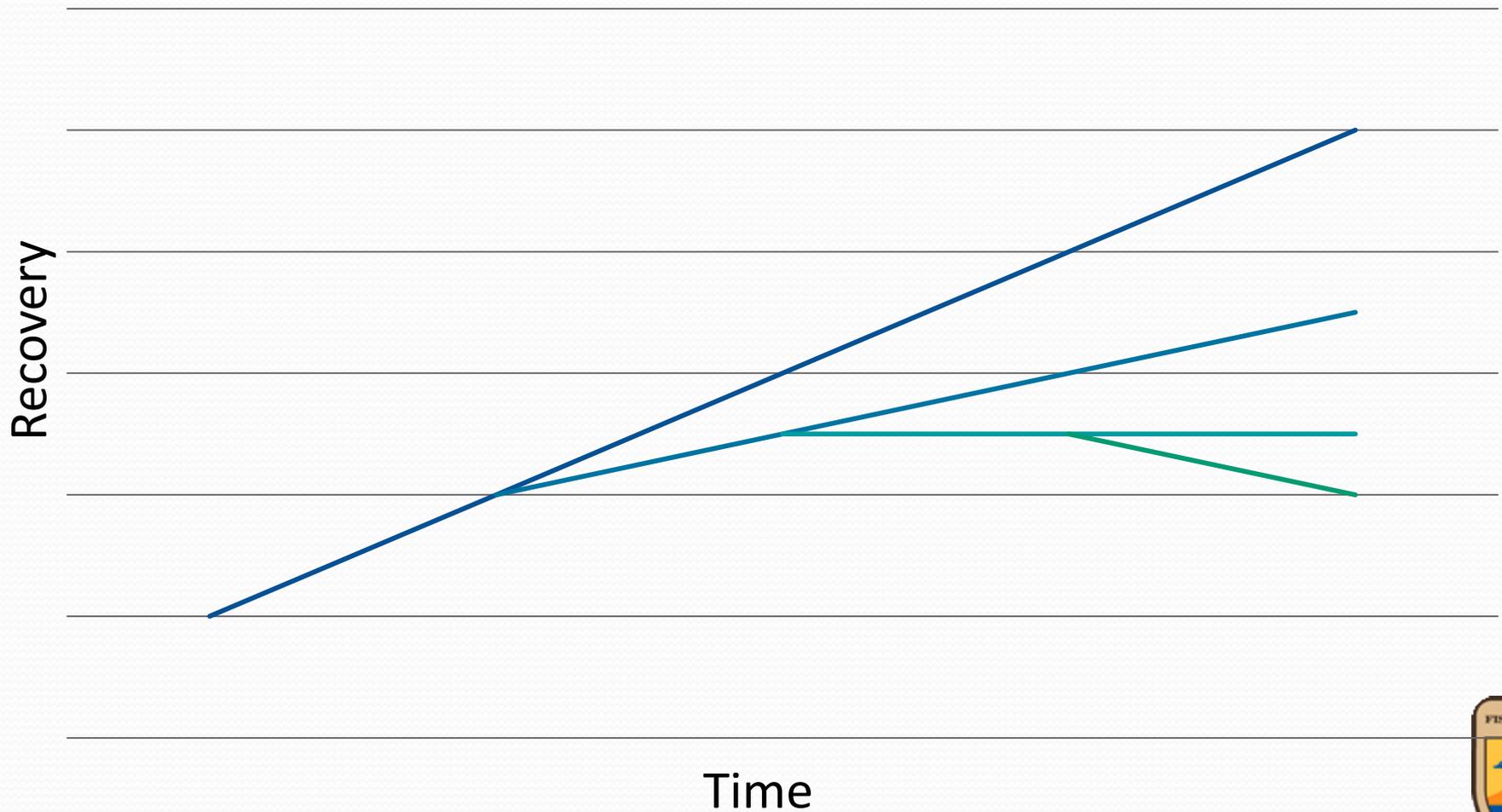
Death by a Thousand Cuts



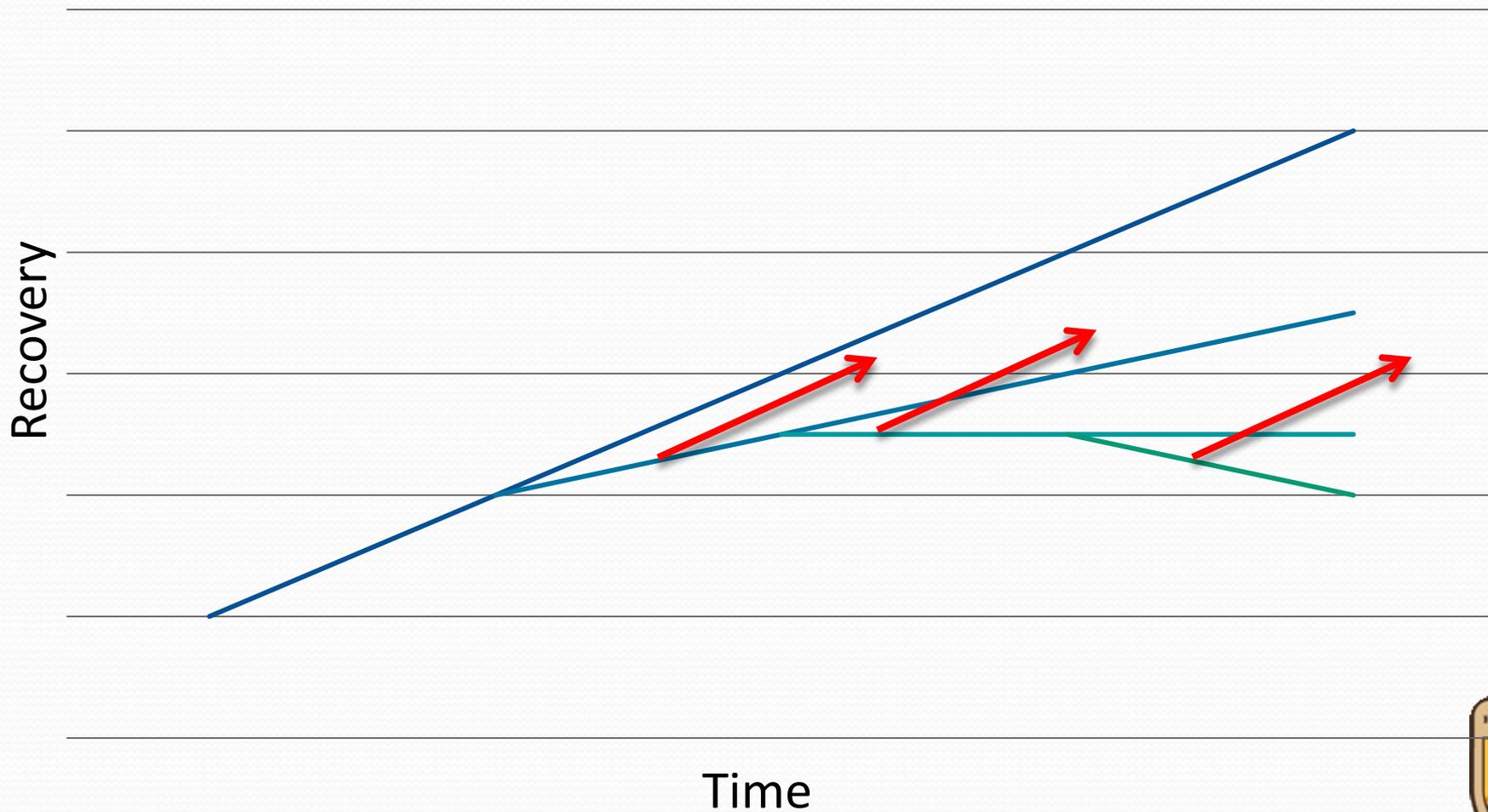
Death by a Thousand Cuts



Death by a Thousand Cuts



Integrate Section 7



Section 7

- Ultimate goal is to recover listed species to the point they no longer need the protection of the Act
- By integrating section 7(a)(1) into 7(a)(2)



Section 10

- Research and Recovery Permits – 10(a)(1)(A)
- Form 3-200-55
- Takes at least 90 days
- Must show experience and credentials
- <http://www.fws.gov/forms/3-200-55.pdf>



Section 4 – Recovery Planning

- Describe the process to reverse downward trends to ensure long-term survival. Section 4(f)(1)(B) specifies the contents of a recovery plan. Sections of this Revised Recovery Plan meeting these requirements are:
 - Site-specific management actions needed to achieve the Plan's goal for the conservation and survival of the species;
 - Objective, measurable criteria that, when met, would result in a determination that the species be removed from the list; and
 - Estimate resources needed (time and cost) to recover the species.
- Recovery plans are neither self-implementing nor legally binding.

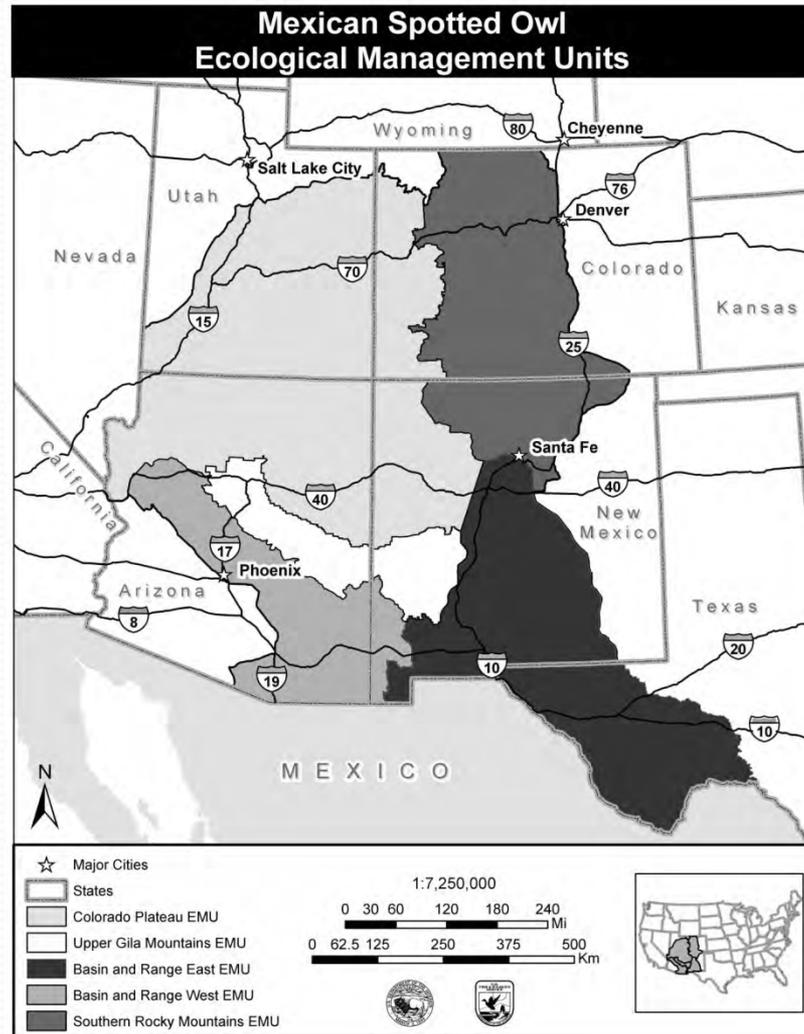


MSO Recovery Plan

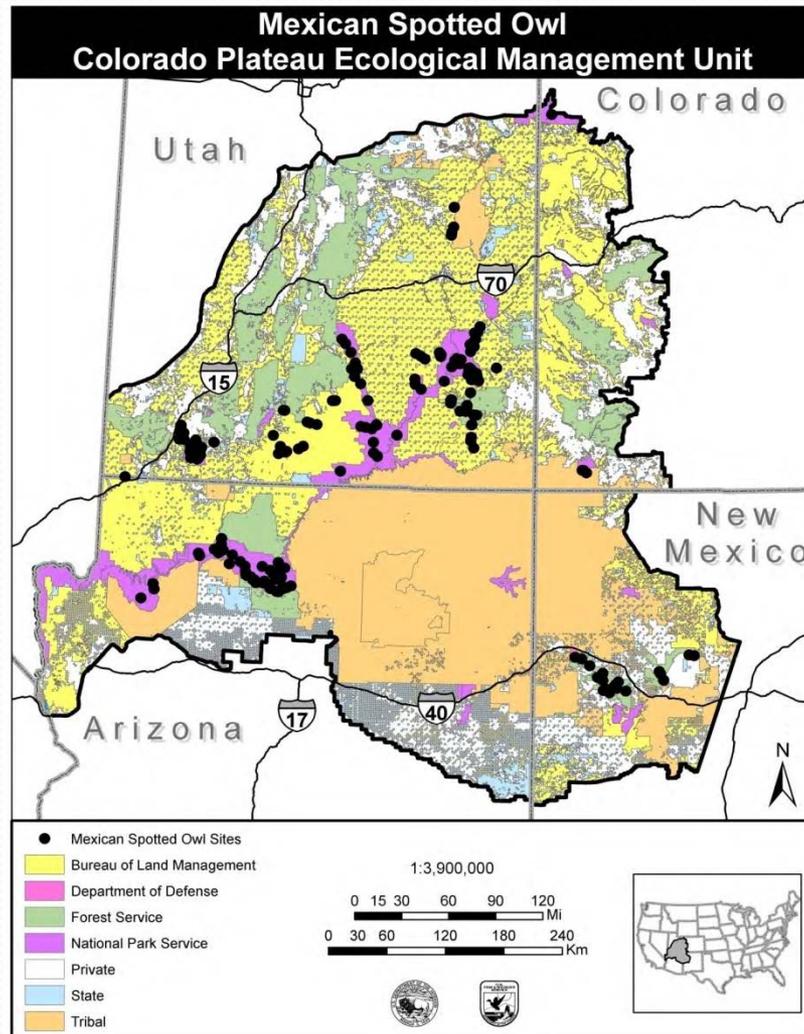
- Original Approval Date October 16, 1995
- Revised September 5, 2012
- Goal is to recover owl populations to the point that the owl can be removed from the Federal list of endangered and threatened species.



Ecological Management Units

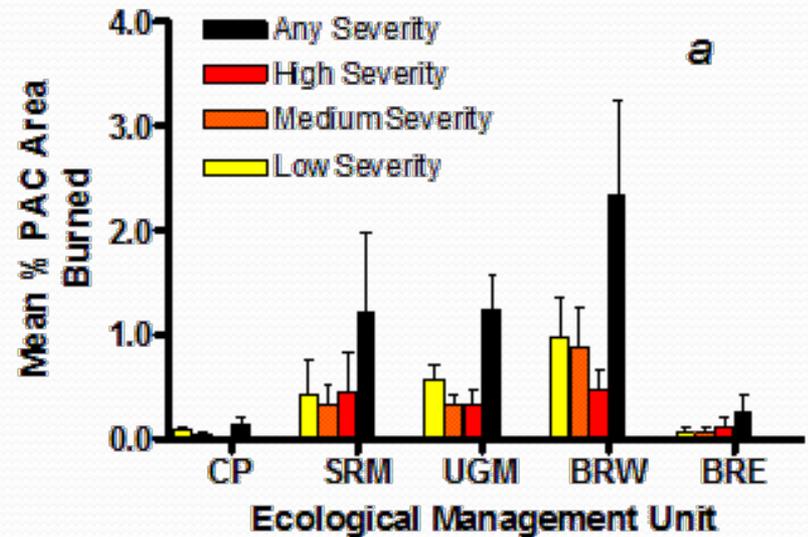


Ecological Management Units



Site Specific Management Actions

- Tie Management Actions to Abating Threats
 - Recreation
 - Forest and fire management
 - Livestock grazing
 - Coal and uranium mining
 - Oil and gas development



Crosswalk Threats to Management

Table of Crosswalk Between Threats and Management Recommendations

		MANAGEMENT ACTION										
Appendix C Section		C.4.b	C.4.c	C.4.d	C.4.e	C.4.f	C.4.g	C.4.h	C.4.i	C.4.j	C.4.k	C.4.l
Part II Section	THREAT	Insects and disease	Grazing	Energy related development	Land development	Water development	Recreational exploitation	Recreational disturbance	Scientific exploitation	Noise	Climate change	West Nile virus
	FACTOR A											
II.H.3.a.i	Stand-replacing Fire	X									X	
II.H.3.a.vii	Grazing		X									
II.H.3.a.viii	Energy Development			X								

- II.H.3.a.viii
 - Part II. Background
 - H. Threats and Threats Assessment
 - 3. Factors Affecting the Mexican Spotted Owl in the United States
 - a. Factor A
 - viii. Energy Development – **page 44**



Crosswalk Threats to Management

Table of Crosswalk Between Threats and Management Recommendations

		MANAGEMENT ACTION										
Appendix C Section		C.4.b	C.4.c	C.4.d	C.4.e	C.4.f	C.4.g	C.4.h	C.4.i	C.4.j	C.4.k	C.4.l
Part II Section	THREAT	Insects and disease	Grazing	Energy related development	Land development	Water development	Recreational exploitation	Recreational disturbance	Scientific exploitation	Noise	Climate change	West Nile virus
	FACTOR A											
II.H.3.a.i	Stand-replacing Fire	X									X	
II.H.3.a.vii	Grazing		X									
II.H.3.a.viii	Energy Development			X								

- C.4.d
 - Appendix C – Management Recommendations
 - 4. Threat-specific Management Recommendations
 - d. Energy-Related Development



Recommended Management Measures within Core Areas

- 40 ha (100 ac) within PAC & around nest
 - All activities within the core area should undergo consultation with the appropriate FWS office.
 - All management activities should be deferred from the core during the breeding season (March 1 through August 31), except when non-breeding is confirmed or inferred that year per the accepted survey protocol.
 - Planned or unplanned fires should be allowed to enter core areas only if they are expected to burn at low intensity with low severity effects



Recommended Management Measures within PACs

- At least 243 ha (600 ac) around Core Area
 - All activities within the PAC should undergo consultation with the appropriate FWS office.
 - Mechanical treatments can be conducted in up to 20% of the total non-core PAC area within each EMU (treatments can exceed 20% of the non-core acreage within a single PAC)
 - No mechanical or prescribed fire treatments, or road or trail maintenance should occur within PACs during the breeding season unless it has been determined that the PAC is unoccupied or the owls are not nesting that year as inferred from results of surveys conducted according to protocol.
 - Removal of hardwoods, downed woody debris, snags, and other key habitat variables should occur only when compatible with owl habitat management objectives as documented through reasoned analysis.
 - New road or trail construction is not recommended in PACs
 - Monitor treatment effects as described in Appendix C.
 - See Table C.2 for desired conditions for PACs.



Recommended Management Measures within Recovery Habitats

- Unoccupied habitat – Canyon PCE's
 - As the species recovers or nest/roost habitats are lost, recovery habitat should be in the queue ready for owls to occupy them



Our mission

Working with others to conserve, protect and enhance fish, wildlife, plants and their habitats for the continuing benefit of the American people.

