

Endangered Species Act (ESA)

U.S. Fish and Wildlife Service
Ecological Services
Utah Field Office



Purpose of the ESA

- To protect and recover imperiled species and the ecosystems upon which they depend
- Administered by the U.S. Fish and Wildlife Service (FWS) and the Commerce Department's National Marine Fisheries Service (NMFS)
- FWS has primary responsibility for terrestrial and freshwater organisms
- NMFS' responsibilities are mainly marine wildlife



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

Proposed - a species is proposed in the Federal Register to be listed under section 4 of the ESA.

Candidate - species for which Service has sufficient information on vulnerability and threats to support a proposed rule to list but the proposed rule is precluded. Afforded no protection under the ESA.



Key sections of the ESA

- Section 4 – Determination of Endangered Species and Threatened Species: Listing and Delisting, Critical Habitat, Recovery Plans, Monitoring
- Section 7 – Interagency Cooperation: Requires all Federal agencies to ensure they do not further endanger any listed species or critical habitat.
- Section 9 – Prohibited Acts: For plants this includes remove and reduce to possession



ESA Listing Factors (Section 4)

To be considered for listing, the species must meet one of five criteria (section 4(a)(1)):

1. There is the present or threatened destruction, modification, or curtailment of its habitat or range.
2. An over utilization for commercial, recreational, scientific, or educational purposes.
3. The species is declining due to disease or predation.
4. There is an inadequacy of existing regulatory mechanisms.
5. There are other natural or manmade factors affecting its continued existence.



Petition Received



Not substantial information



90 day finding



Substantial information



12 month finding



Listing warranted

Listing not warranted

Listing warranted but precluded



Proposed listing with critical habitat

Proposed listing without critical habitat



Final listing with critical habitat

Final listing with proposed critical habitat



Final critical habitat



ESA De-Listing Factors

- Recovery goals have been met
- Review 5 listing factors
- Publish proposed rule to downlist or delist
- Seek peer review and public input
- Publish final rule
- Remove from list and monitor for at least 5 years



Section 9 of the ESA

- Section 9(a)(2) - plants
 - Remove and reduce to possession any such species from areas under Federal jurisdiction;
 - Maliciously damage or destroy any such species on any such area; or
 - Remove, cut, dig up, or damage or destroy any such species on any other area in knowing violation of any law or regulation of any state or in the course of any violation of a state criminal trespass law.
 - Unlawful to import into or export from the U.S.



Section 7 Consultation

- Federal agencies work together to aid in the recovery of listed species, and to address existing and potential conservation issues.
- Federal nexus/action: all activities or programs of any kind, authorized funded, or carried out in whole or in part by Federal agencies.



Section 7(a)(2) of the ESA

- Federal agencies shall insure that any action they authorize, fund, or carry out:
 - Is not likely to jeopardize the continued existence of a listed species
 - Does not result in the destruction or adverse modification of designated critical habitat



No critical habitat has been designated in the Uinta Basin



Section 7(b) of the ESA

- Requires Service to issue a written statement detailing how the action affects listed species or critical habitat (jeopardy / no jeopardy opinion)

Section 7 (c) of the ESA

- Requires a biological assessment if listed species or critical habitat may be present in the area



Informal consultation

- An “unstructured approach” to include meetings, phone calls, letters, project modifications, and recommendations from the Service
 1. Federal Action?
 2. May Affect listed species or critical habitat?
 3. Effort made to eliminate adverse effects
 4. “May Affect, Not Likely to Adversely Affect”

Written concurrence within 30 days when possible



Formal Consultation

1. Federal action?
 2. May affect listed species or critical habitat?
 3. May Affect, Likely to Adversely Affect”
- Identify the extent of the effects of the proposed action on listed species and critical habitat
 - Identify ways to help conserve the listed species or critical habitat under the proposed action

Mandated 135 days to complete a Biological Opinion upon receipt of a complete Biological Assessment



Requests for formal consultation must be done in writing and include:

- A description of the action
- A description of the area affected by the action
- A description of any listed species or critical habitat that may be affected by the action
- A description of the manner in which the action may affect any listed species or critical habitat
- Analysis of cumulative effects
- Relevant reports including an EIS or EA, and BA
- Any other relevant information available on the action, the affected listed species, or critical habitat



Biological Opinion

- Description of the proposed action
- Status of the species / critical habitat
- Environmental baseline
- Effects of the action
- Cumulative effects
- Conclusion of jeopardy/no jeopardy and/or adverse modification/no adverse modification, and reasonable and prudent measures if applicable



Clarification of Terms

- jeopardize the continued existence
 - would appreciably reduce the likelihood of the species survival and recovery
- destroy or adversely modify
 - would appreciably reduce the value of critical habitat for the survival and recovery of the listed species



Determining the action area

- Consider all direct and indirect effects of the action
- Interrelated activity – part of the proposed action and depends on the proposed action for its justification
- Interdependent activity – no independent utility apart from the action
- “But for” test – Would an activity occur “but for” the proposed action? If the answer is no, the activity would not occur “but for” the proposed action, then the activity is interrelated and interdependent and should be analyzed with the effects of the action.



Analyzing Effects

- A thorough analysis of an action's effects on the species and critical habitat is an essential component of the consultation process.
- How will the action potentially impact plants?
 - Increased invasive species
 - Increased dust
 - Impacts to pollinators
 - Habitat alteration



Cumulative Impacts

- Under the ESA, cumulative impacts include “those effects of **future State or private activities**, not involving Federal activities, that are **reasonably certain to occur** within the action area of the Federal action subject to consultation.” (50 C.F.R. § 402.02).
- Under NEPA, cumulative effects include the effect of the proposed action, together with impacts of past, present, and **reasonably foreseeable future actions**, regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time (40 CFR 1508.7).
- The distinction between NEPA and ESA definitions should be taken into account when preparing cumulative impacts analyses that are intended to serve both laws.



Consultant's Role

- Provide technical expertise to project proponent and sometimes agency
- Typically conduct field assessments/surveys
- Preparation of documents for action agency (EA, EIS, BA...)
- Attend meetings on behalf of project proponent
- Submit annual reports to appropriate agencies
- Go between for agency and project proponent.



Consultants--

- Do not make effect determinations.
- Do not request concurrence or consultation.
- Act on behalf of agencies only when requested to do so



More Information

- Endangered Species Act of 1973
 - <http://www.fws.gov/endangered/esa-library/index.html#esa>
- 50 CFR 402
 - <http://www.ecfr.gov/cgi-bin/searchECFR?idno=50&q1=402&rgn1=PARTNBR&op2=and&q2=&rgn2=Part>
- The Section 7 Consultation Handbook
 - <http://www.fws.gov/endangered/esa-library/>
- Additional species information
 - http://ecos.fws.gov/species_profile/SpeciesProfile?spcode=B074
- Utah Conservation Data Center
 - <http://dwrcdc.nr.utah.gov/ucdc/>

