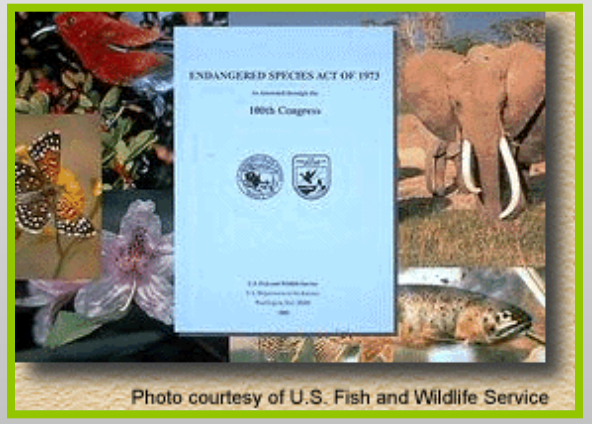
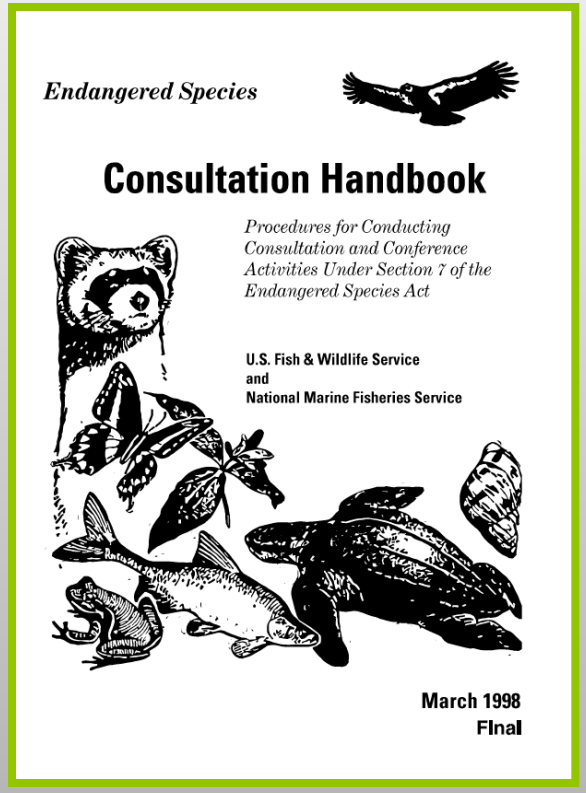
THE ENDANGERED SPECIES ACT AND THE UTAH PRAIRIE DOG

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

Laws, Regulations & Guidelines

- Statutory Authority
  - Endangered Species Act
- Regulations
  - 50 CFR 402
- Consultation Handbook





The Endangered Species Act

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

The Endangered Species Act

- Section 4:

  Listing, Critical Habitat Designation, Recovery, Monitoring
- Section 6:

  How we work with State Partners (Funding)
- Section 7:

  The Role of Federal Agencies (Consultation)
- Section 9:

  Unlawful Activities (Take)
- Section 10:

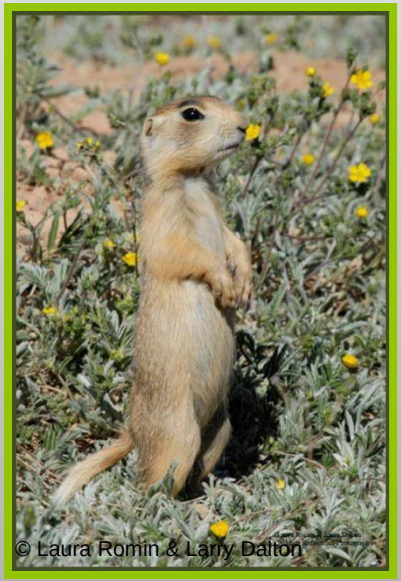
  Exceptions, Permits (SHAs & HCPs)

Utah prairie dog Listing Actions (Section 4)

- Endangered
  - June 4, 1973
  - 38 FR 14678
- Threatened
  - May 29, 1984
  - 49 FR 22330 with special 4(d) rule
- 4(d) special rule amended
  - June 14, 1991
  - 56 FR 27438
  - Revised 4(d) rule Aug, 2 2012
  - Expanded to include lands near conservation lands/safety hazards/significant human cultural and burial sites

Listing Factors (Section 4)

A. Present or threatened destruction, modification, or curtailment of its habitat or range;
B. Over-utilization for commercial, recreational, scientific, or educational purposes;
C. Disease or predation;
D. Inadequacy of existing regulatory mechanisms; and
E. Other natural or manmade factors



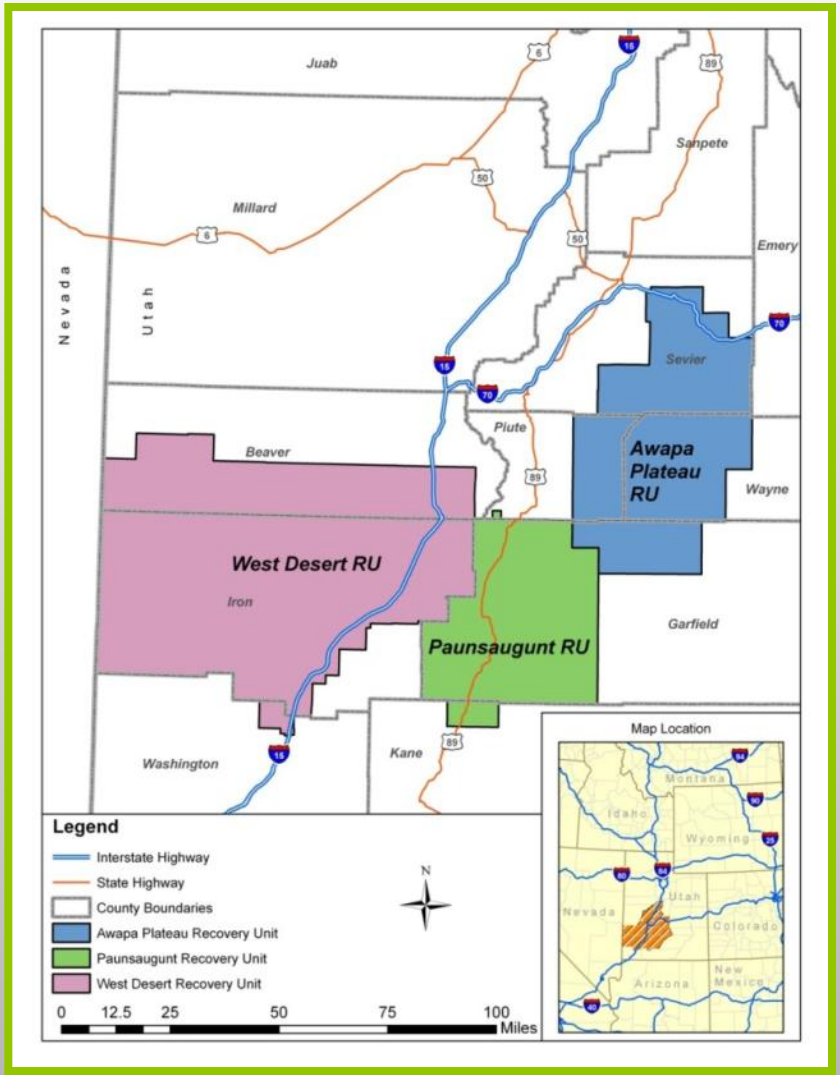
Recovery Plan (Section 4)

- First Recovery Plan was finalized- September 30, 1991
- Revised Recovery Plan was published in Federal Register Spring 2012
- Developed to promote the conservation and recovery of the species

Recovery Plan – 5 basic elements

- Recovery goal and a set of delisting criteria
- Three general strategies for management
- Recommendations for population and habitat monitoring
- Research program to address critical information needs
- Implementation procedures that specify oversight and coordination responsibilities

Three Recovery Units (RUs)



Source: USFWS 2011 Draft Recovery Plan

Changes to Recovery Plan

- Plague Management
- Conservation on private lands
- Improving translocation techniques
- Updating goal and criteria for recovery
- Spatial distribution

Section 9 of the Act

- Makes it unlawful to “take” any threatened or endangered species
- Definition of “Take”
  - To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct.
  - Applies to **any** person or Federal Agency.

50 CFR 17.3

- Definition of “Harm”

“means an act which actually kills or injures wildlife. Such acts may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.”

- Definition of “Harass”

“means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.”

Avoiding Prohibitions of Section 9

- Section 7
  - Incidental Take **Statement**
  - Federal activities
- Section 10
  - Incidental Take **Permit**
  - Non-federal activities

Source: UPDHCEP Presentation

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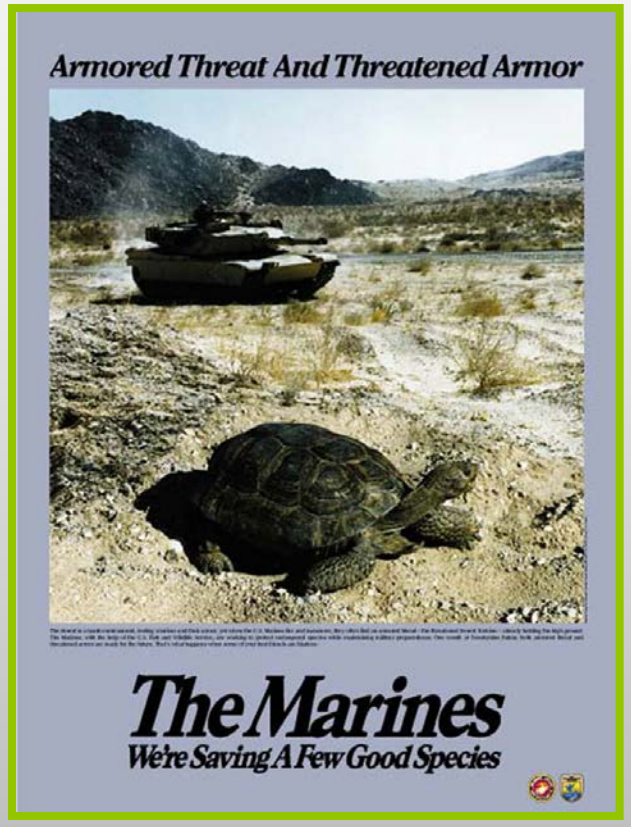
Evaluating Proposed Projects

- Is the project area in or adjacent to Utah prairie dog habitat?
  - Habitat mapping
  - Field Evaluations
  - Coordination with Experts
- Will the action potentially impact the Utah prairie dog?
  - Noise
  - Increased Human Activities
  - Habitat Alteration
    - Breeding
    - Foraging
    - Shelter

Section 7
The Role of Federal Agencies

7(a)(1) Federal agencies must carry out their programs and authorities to protect and conserve listed species.

7(a)(2) Any action that an agency authorizes, funds, or carries out cannot jeopardize the existence of any listed species.



Section 7 Consultation

- 50 CFR 402 defines consultation process
  - Analyzes effects at individual level in addition to jeopardizing the species
- If an action may affect a listed species or critical habitat, the agency must consult with FWS
- Early coordination with FWS is important

Section 7 Consultation

- No effect = No Consultation necessary
  - Project will not directly or indirectly affect listed species or critical habitat.
- Is <u>not</u> Likely to Adversely Affect = Informal Consultation
  - Project effects on listed species or critical habitat are discountable, insignificant, or completely beneficial.
- Is Likely to Adversely Affect = Formal Consultation
  - Project will adversely affect listed species or critical habitat.

Section 7 Consultation

- Informal Consultation
  - Determines species to be affected
  - Determines the effects
  - Explores project modifications to avoid or eliminate effects
  - Determines the need for formal consultation

Section 7 Consultation

- Formal Consultation
  - If effects are adverse, the agency initiates formal consultation.
  - Involves detailed information (Biological Assessment)
  - Biological Opinion is issued by the Service
  - Timeline can total 135 days

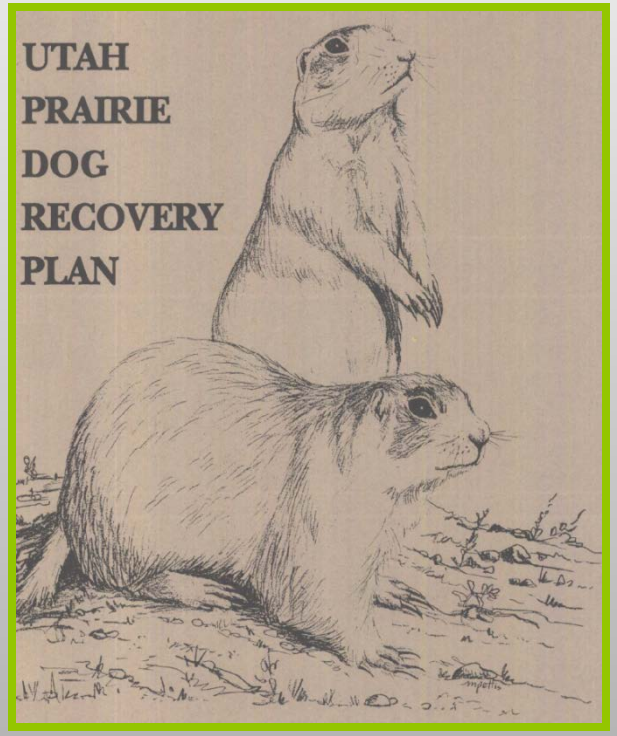
Section 7 Consultation

- Biological Opinion
  - Not likely to jeopardize species or adversely modify critical habitat:
    - incidental take statement
    - reasonable and prudent measures to minimize take
  - Likely to jeopardize species or adversely modify critical habitat:
    - reasonable and prudent alternatives to the action

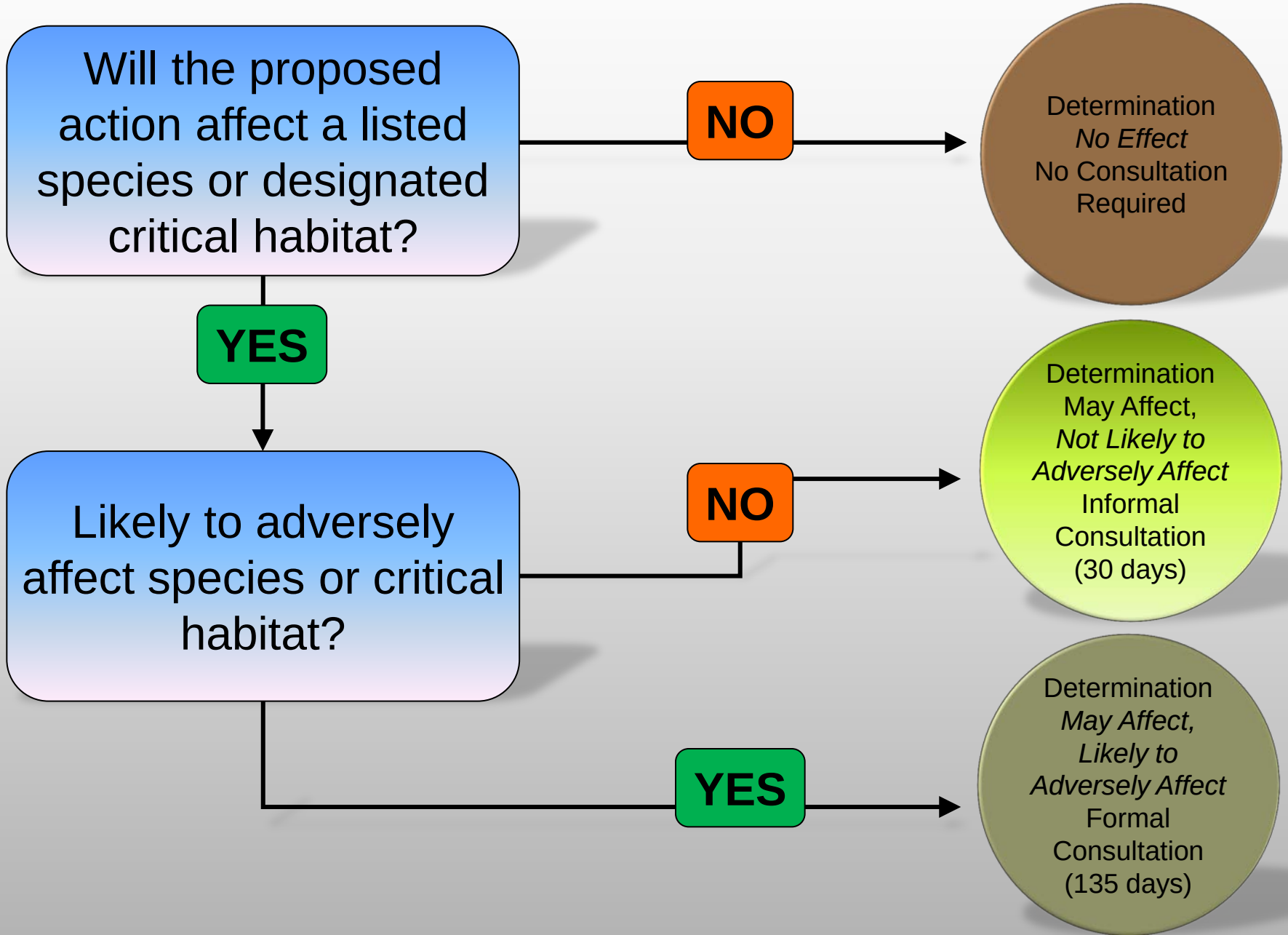
Note: Take is only authorized through formal consultation.

Section 7 Consultation

- Incidental Take Statement
- Consistency with Recovery Plan
  - Includes descriptions of site-specific management actions necessary to conserve and ensure survival of the species



Decision Tree – Section 7 Consultation



Section 10

- **Section 10(a)(1)(B)**
  - Incidental Take Permitting Process for non-federal activities

- **Habitat Conservation Plan (HCP) - must specify:**
  - (i) the impact which will likely result from such taking;
  - (ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;
  - (iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and
  - (iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.

Section 10

- All HCPs are different – know the requirements for the HCP you are working with
- Iron County HCP on Utah FWS website
  - http://www.fws.gov/utahfieldoffice/index.html
  - To allow continued development and economic growth in Iron county while conserving and recovering the Utah prairie dog on public lands.
- Areas outside Iron County would need to develop an HCP for projects that result in the incidental take of Utah prairie dogs

Iron County HCP

Non-Permanent Take

- Habitat is not destroyed but the # of Utah prairie dogs in colony is temporarily reduced
- Up to 300 animals annually

Permanent Take

- Habitat is permanently destroyed
- Not to exceed 10% of the 5 year average count of UPD on federal lands

Iron County HCP

- Surveys determine # of animals
- # is reported to County
- County then authorizes take to the developers
- Prior to development Utah prairie dogs are trapped and translocated *as feasible*

More Information

- Endangered Species Act of 1973
  - http://www.fws.gov/endangered/ESA/content.html
- 50 CFR 402
  - http://frwebgate.access.gpo.gov/cgi-bin/multidb.cgi
- The Section 7 Consultation Handbook
  - http://endangered.fws.gov/consultations/s7hndbk/s7hndbk.htm
- Additional species information
  - http://www.fws.gov/endangered/wildlife.html
- Section 10
  - http://www.fws.gov/endangered/esa/sec10.html

ANY QUESTIONS?