

Endangered Species Act (1973)

- Allows protection for all species (= species, subspecies, distinct pop. segments of vertebrates [aka evolutionarily significant units to NMFS])
- Focuses on species in their natural environments
- Gives joint authority to Fish and Wildlife Service and NMFS



Key deer



American alligator



Aleutian Canada goose

Key Definitions

Endangered Any species in danger of extinction throughout all or a significant portion of its range



Threatened Any species likely to become endangered in the foreseeable future



Critical Habitat Specific geographic areas with physical and biological features essential to the conservation of a listed species



Key Definitions

Proposed Any species for which a proposal to list has been published in the *Federal Register*



Oregon spotted frog

Candidate Any species for which we have sufficient biological information to support a proposal to list as endangered or threatened



Greater sage-grouse

Listed Species & Critical Habitat in Oregon

- See our website: www.fws.gov/oregonfwo/
- Species information:
www.fws.gov/oregonfwo/Species/default.asp#FactSheets
- Request a species list:
www.fws.gov/oregonfwo/Species/Lists/RequestList.asp

Recovery

- Reduce or eliminate threats to listed animals and plants
- Restore self-sustaining wild populations
- Remove species from the list



Bull trout

That's the goal

Prohibited Acts: Wildlife

Section 9 of the Act prohibits take

- **Take** means: harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in these activities.
- The take prohibition for wildlife applies to any person including a Federal agency.
- Also prohibits import, export, interstate transport, possession or sale.

Harass

Harass: Actions that create the likelihood of injury to listed species to such an extent as to **significantly disrupt normal behavior patterns** which include, but are not limited to, breeding, feeding or sheltering.

Defined by regulation (50 CFR 17.3)

Harm

Harm: An act which actually kills or injures wildlife. Such act 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. (NMFS' definition includes spawning and rearing here, too).

Defined by regulation (50 CFR 17.3)

Prohibited Acts: Plants

- Plants were not accorded the same level of protection as animals
- On Federal lands, may not remove or reduce to possession, maliciously damage or destroy
- Elsewhere, may not remove, damage or destroy in knowing violation of State law or criminal trespass law
- No interstate sale, import or export



Take is not prohibited for plants, but still must consider adverse effects in section 7 consultation!

Special Rule: Larks at Airports

also called a 4(d) rule

Certain activities at airports undertaken for hazardous wildlife management are exempted from the take prohibition:

- Routine management, repair and maintenance of roads and runways
- Control of vegetation through mowing, discing, herbicide application and burning
- Hazing of hazardous wildlife
- Management of forage, water and shelter
- Includes incidental take of larks caused by accidental aircraft strikes

How do you know if you have an “endangered species issue”?

Ask these questions:

- Is your airport within the range of a listed species?
- Is there potential habitat for that species in the project area?
- Have you done surveys for the species?
- Will your project affect a listed species?
- Is there Federal agency involvement in your project (nexus = fund, authorize, carry out)
- Does a special rule cover all of your activities?

Is there a Federal Agency involved?

Section 7 Consultation

“Affirmative Conservation Mandate”

Section 7(a)(1) - Federal agencies shall use their authorities to carry out their programs for the **conservation** of endangered & threatened species

- **conservation:** the use of methods and procedures to bring any endangered or threatened species to the point where provisions of the ESA are no longer necessary

Section 7 Consultation

“Duty to Avoid Jeopardy”

Section 7(a)(2) - Federal agencies must ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat

Section 7 Consultation

Federal Nexus = “... any action funded, authorized or carried out by a Federal agency”

If a Federal agency action may affect a listed species or critical habitat, the agency must initiate consultation with FWS or NMFS

**Effects to listed species or
Critical Habitat**

+ Federal nexus

= Biological Opinion

If There is No Federal Nexus, Then What?

Is there a likely violation of section 9 take prohibitions?

If a state, municipal or private action is likely to take a listed species, then a permit under section 10 is required*

Project proponent prepares a Habitat Conservation Plan, NEPA document and an Implementing Agreement in support of the permit application. Issuance of a section 10 permit comes with a “no surprises” guarantee (which is not available to Federal agencies).

**Unless the take is exempted by a 4(d) rule*

Federal Nexus or Not, you'll need to provide:

- Description of the action
- Description of the action area
- Description of listed species or critical habitat affected
- Description of the manner in which the action may affect listed species, critical habitat and an analysis of cumulative effects
- Conservation measures: avoidance, minimization, compensation

Section 7 vs HCP

Is there a Federal Nexus?

If yes,

May affect? If yes,

Federal action agency initiates Section 7 Consultation

Action agency develops a Biological Assessment and measures to minimize take

USFWS makes Jeopardy determination, issues Biological Opinion, with take authorization

Implement the project

If no,

Likely to take? If yes,

Apply for a Section 10 Permit

Applicant develops a Habitat Conservation Plan with mitigation measures, NEPA document and an implementing agreement (with funding assurances)

USFWS reviews HCP and NEPA document, makes both available for public comment

USFWS conducts an intra-service Section 7 consultation, makes Jeopardy determination, issues Biological Opinion

USFWS issues Section 10 permit with assurances

Implement the project and associated conservation plan

Got a project that needs an exemption from take prohibitions?

Actions with a Federal nexus:

- Lead Federal agency consults under section 7
 - Result = Biological Opinion

Actions without a Federal nexus:

- Apply for an incidental take permit under section 10(a)(1)(B) and prepare a Habitat Conservation Plan (HCP), NEPA and other docs
 - Result = Section 10 Permit

The key to successful consultation....

 Early coordination!

