



Little-Known But Important Features of the Endangered Species Act Distinct Population Segments, 4(d) Rules, and Experimental Populations

There are features built into the Endangered Species Act (Act) and its implementing regulations that give the U.S. Fish and Wildlife Service flexibility in listing, protecting, managing, and recovering species that need the Act's protections. Despite the fact that we commonly use these features, they are not well understood by the general public. Here are some facts.

Distinct Population Segments

In addition to the listing and delisting of species and subspecies, the Act allows the listing/delisting of Distinct Population Segments of vertebrate species (i.e., animals with backbones: mammals, birds, fish, reptiles, and amphibians). A Distinct Population Segment is a portion of a species' or subspecies' population or range. The Distinct Population Segment is generally described geographically, such as "all members of XYZ species that occur north of 40E north latitude."

Our policy for designating Distinct Population Segments is sometimes called the Vertebrate Population Policy. This policy contains the criteria that must be met for a portion of a species' population to be designated as a Distinct Population Segment. Those criteria include the requirements that a Distinct Population Segment must be discrete and significant. Congress has instructed us to use this authority sparingly and only when supported by biological data. This policy was published in the Federal Register (61 FR 4722-4725; February 7, 1996) and can be found on the Web at: <http://endangered.fws.gov/policy/pol005.html>

Examples of currently listed Distinct Population Segments:

- the northern population of the copperbelly water snake
- the northern population of the bog turtle
- the 48-state population of the bald eagle
- the Eastern, Western, and Southwestern gray wolf populations

Section 4(d) Special Rules

Section 4(d) of the Act provides that we may decide how the protections of the Act relating to "taking", or harming of the species, are applied to threatened (not endangered) species, subspecies, and Distinct Population Segments. This provides customized protection aimed at the actual needs of a species, as we believe necessary and advisable for its conservation. We can also choose to apply the full range of protections in the Act to threatened species, as is automatic for species that are classified as endangered.

These "4(d) rules" or "special rules" enable us to reduce conflicts between the provisions of the Act and needs of people near the areas occupied by the species. This type of special rule has been in effect for gray wolves in Minnesota for many years, and by recent action has been extended to gray wolves in many other states. For example, under the rule for Minnesota, wolves that have preyed on domestic animals can be killed by designated government agents. This rule was created to avoid even larger numbers of wolves being killed by private citizens who otherwise might take wolf control into their own

hands, and to increase public support for the recovery of the wolf population. (For more details on this example of a special rule, refer to Title 50 of the Code of Federal Regulations, part 17.40(d) for the text of this rule.)

Experimental Populations

Re-establishing a threatened or endangered species in areas of its former range is often necessary for recovery. However, residents and businesses frequently oppose such reintroductions because they fear the presence of the species will also bring severe restrictions on the use of private and public land in the area. To overcome this serious obstacle to species reintroductions, Congress added the concept of experimental populations to the Act. Experimental population designations are sometimes referred to as section 10(j) rules.

An experimental population is a geographically-described group of reintroduced plants or animals that is isolated from other existing populations of the species. Members of the experimental population are considered to be **threatened** under the Act, and thus, can have special regulations written for them. In addition, if the experimental population is determined to be "nonessential" to the survival of the species, for most activities by other Federal agencies the experimental population is treated like a species that is **proposed** for listing as threatened or endangered. In other words, the nonessential experimental population is not given the full protections otherwise provided by the Act.

Among numerous examples of experimental populations are the Colorado pikeminnow (or squawfish), the southern sea otter, the gray wolf in the Southwest and the Northern U.S. Rockies, the black-footed ferret, and the whooping crane.

Summary

These three aspects of the Endangered Species Act all can promote the recovery of declining species by fine-tuning the protections of the Act. This fine-tuning minimizes adverse impacts on people and society while increasing the likelihood of eventual recovery and delisting of the species. Thus, people and rare species both benefit from their careful use.