



# ESA Basics

## *More Than 30 Years of Conserving Endangered Species*

When Congress passed the Endangered Species Act (ESA) in 1973, it recognized that our rich natural heritage is of “esthetic, ecological, educational, recreational, and scientific value to our Nation and its people.” It further expressed concern that many of our nation’s native plants and animals were in danger of becoming extinct.

The purpose of the ESA is to protect and recover imperiled species and the ecosystems upon which they depend. It is administered by the Interior Department’s U.S. Fish and Wildlife Service (FWS) and the Commerce Department’s National Marine Fisheries Service (NMFS). The FWS has primary responsibility for terrestrial and freshwater organisms, while the responsibilities of NMFS are mainly marine wildlife such as whales and anadromous fish such as salmon.

Under the ESA, species may be listed as either endangered or threatened. “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. All species of plants and animals, except pest insects, are eligible for listing as endangered or threatened. For the purposes of the ESA, Congress defined species to include subspecies, varieties, and, for vertebrates, distinct population segments.

As of March 2008, the FWS has listed 1,925 species worldwide as endangered or threatened, of which 1,351 occur in the U.S.

### How are Species Listed?

Section 4 of the ESA requires species to be listed as endangered or threatened solely on the basis of their biological status and threats to their existence. When evaluating a species for listing, the FWS considers five factors: 1) damage to, or destruction of, a species’ habitat; 2) overutilization of the species for commercial, recreational, scientific, or educational purposes; 3) disease or



Puerto Rican parrot

Tom MacKenzie/USFWS

listed plants and animals, including their parts and products, except under Federal permit. Such permits generally are available for conservation and scientific purposes.

### What is “Take”?

The ESA makes it unlawful for a person to take a listed animal without a permit. Take is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct.” Through regulations, the term “harm” is defined as “an act which actually kills or injures wildlife. Such an 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.” Listed plants are not protected from take, although it is illegal to collect or maliciously harm them on Federal land. Protection from commercial trade and the effects of Federal actions do apply for plants. In addition, States may have their own laws restricting activity involving listed species.

### Recovery

The law’s ultimate goal is to “recover” species so they no longer need protection under the ESA. Recovery plans describe the steps needed to restore a species to ecological health. FWS biologists write and implement these plans with the assistance of species experts; other Federal, State, and local agencies; Tribes; nongovernmental organizations; academia; and other stakeholders.

### Federal Activities

Section 7 of the ESA requires Federal agencies to use their legal authorities to promote the conservation purposes of the ESA and to consult with the FWS and NMFS, as appropriate, to ensure that effects of actions they authorize, fund, or carry out will not jeopardize the continued existence of listed species. During consultation the “action” agency receives a “biological opinion” or concurrence letter addressing the proposed action.

predation; 4) inadequacy of existing protection; and 5) other natural or manmade factors that affect the continued existence of the species. When one or more of these factors imperils the survival of a species, the FWS takes action to protect it. To ensure the accuracy of the data, the FWS decides all listings using sound science and peer review.

### Candidates for Listing

The FWS also maintains a list of “candidate” species. These are species for which the FWS has enough information to warrant proposing them for listing but is precluded from doing so by higher listing priorities. While listing actions of higher priority go forward, the FWS works with States, Tribes, private landowners, private partners, and other Federal agencies to carry out conservation actions for these species to prevent further decline and possibly eliminate the need for listing.

### Protection

The ESA protects endangered and threatened species and their habitats by prohibiting the “take” of listed animals and the interstate or international trade in

In the relatively few cases in which the FWS or NMFS makes a jeopardy determination, the agency offers “reasonable and prudent alternatives” about how the proposed action could be modified to avoid jeopardy. In almost all cases solutions can be found; it is extremely rare that a project ends up being withdrawn or terminated because of jeopardy to a listed species.

The ESA also requires the designation of “critical habitat” for listed species when “prudent and determinable.” Critical habitat includes geographic areas that contain the physical or biological features that are essential to the conservation of the species and may need special management or protection. Critical habitat designations affect only Federal agency actions or federally funded or permitted activities. Federal agencies are required to avoid “destruction” or “adverse modification” of designated critical habitat.

Critical habitat may include areas that are not occupied by the species at the time of listing but are essential to its conservation. An area can be excluded from critical habitat designation if an economic analysis determines that the benefits of excluding it outweigh the benefits of including it, unless failure to designate the area as critical habitat may lead to extinction of the listed species.

The ESA provides a process for exempting development projects from the restrictions of the law if a Cabinet-level “Endangered Species Committee” decides the benefits of the project clearly outweigh the benefits of conserving a species. Since its creation in 1978, the Committee has only been convened three times to make this decision.

### **Working with States**

Partnerships with States are critical to our efforts to conserve listed species. Section 6 of the ESA encourages States to develop and maintain conservation programs for threatened and endangered species. Federal funding is available to promote State participation. Some State laws and regulations are even more restrictive than the ESA in granting exceptions or permits.

### **Working with Landowners**

Two-thirds of federally listed species have at least some habitat on private land. The FWS has developed an array of tools and incentives to protect the interests of private landowners while

encouraging management activities that benefit listed and other at-risk species.

### **Habitat Conservation Plans**

Section 10 of the ESA provides relief to landowners including private citizens, corporations, Tribes, States, and counties who want to develop property inhabited by listed species. Landowners can receive a permit to take such species incidental to otherwise legal activities, provided they have developed an approved habitat conservation plan (HCP). HCPs include an assessment of the likely impacts on the species from the proposed action, the steps that the permit holder will take to minimize and mitigate the impacts, and the funding available to carry out the steps.

HCPs may benefit not only landowners but also species by securing and managing important habitat.

### **Safe Harbor Agreements**

Safe Harbor Agreements (SHAs) provide regulatory assurance for non-Federal landowners who voluntarily aid in the recovery of listed species by improving or maintaining wildlife habitat. Under SHAs, landowners manage the enrolled property and may return it to originally agreed-upon “baseline” conditions for the species and its habitat at the end of the agreement, even if this means incidentally taking the species.

### **Candidate Conservation Agreements**

It is easier to conserve species before they need to be listed as endangered or threatened than to try to recover them when they are in danger of extinction or likely to become so. Candidate Conservation agreements (CCAs) are voluntary agreements between landowners—including Federal land management Agencies—and one or more other parties to reduce or remove threats to candidate or other at-risk species. Parties to the CCA work with the FWS to design conservation measures and monitor the effectiveness of plan implementation.

### **Candidate Conservation Agreements with Assurances**

Under Candidate Conservation Agreements with Assurances (CCAA), non-Federal landowners volunteer to work with the FWS on plans to conserve candidate and other at-risk species so that protection of the ESA is not needed. In return, landowners receive regulatory assurances that, if a species covered by the CCAA is listed, they will not be required to do anything beyond what is specified in the agreement,

and they will receive an enhancement of survival permit, allowing incidental take in reference to the management activities identified in the agreement.

### **Conservation Banks**

Conservation banks are lands that are permanently protected and managed as mitigation for the loss elsewhere of listed and other at-risk species and their habitat. Conservation banking is a free-market enterprise based on supply and demand of mitigation credits. Credits are supplied by landowners who enter into a Conservation Bank Agreement (CBA) with the FWS agreeing to protect and manage their lands for one or more species. Other landowners who need to mitigate for adverse impacts to those same species may purchase conservation bank credits to meet their mitigation requirements. Conservation banking benefits species by reducing the piecemeal approach to mitigation that often results in many small, isolated and unsustainable preserves that lose their habitat functions and values over time.

### **International Species**

The ESA also implements U.S. participation in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), a 175-nation agreement designed to prevent species from becoming endangered or extinct due to international trade. Except as allowed by permit, CITES prohibits importing or exporting species listed on its three appendices. A species may require a permit under the ESA, CITES, or both.

### **For More Information**

For more information, contact the U.S. Fish and Wildlife Service at the address below, or visit <http://www.fws.gov/Endangered/>.

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