



# The Military and the Endangered Species Act

## *Interagency Cooperation*

The U.S. Department of Defense (DoD) manages approximately 25 million acres (10 million hectares) on more than 425 major military installations throughout the United States. These installations serve as the bedrock upon which the military services conduct essential training, testing, and basing, thereby providing for the Nation's common defense. For years, access limits due to security considerations and the need for safety buffer zones have sheltered these lands from development pressures and large-scale habitat losses. Most military lands contain rare species and fine examples of rare native plant communities, such as old-growth forests, tall-grass prairies, and vernal pool wetlands. Over 300 federally listed species live on DoD-managed lands.

Endangered species management on military lands remains a challenging and critical focus for DoD's resource managers. Successful endangered species management ultimately depends upon the resource manager's skills and expertise, as well as their use of available tools, training, and resources. DoD's continued interagency cooperation and partnerships with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) are essential elements toward these efforts.

### **DoD Guidance on Species Conservation**

Since 1960, the Sikes Act has required military installations to provide for the conservation and rehabilitation of natural resources on DoD lands. A recent amendment, the Sikes Act Improvement Act of 1997, requires DoD and its military services (i.e., Army, Air Force, Navy and Marine Corps) to prepare and implement Integrated Natural Resources Management Plans (INRMPs) for each military installation with significant natural resources. INRMPs aim for sustainable natural resources management while ensuring no net loss in the capability of installation lands to support the military mission.

*Coexisting with nature, Marines train at Camp Lejeune, North Carolina, in the midst of prime habitat for the endangered red-cockaded woodpecker.*



DoD and each military service has implementing instructions for compliance with the Sikes Act, Endangered Species Act (ESA), and other natural resources laws and regulations. The following outlines the main points of these instructions as they pertain to ESA compliance:

- **DoD Instruction, DoDI 4715.3:** Stipulates that procedures to comply with ESA mandates shall emphasize military mission requirements and interagency cooperation during consultation, species recovery planning, and management activities.
- **Army Regulation, AR 200-3:** States that it is an Army goal to systematically conserve biological diversity on Army lands within the context of its mission.
- **U.S. Air Force Instruction 32-7064:** Stipulates that each Air Force installation must develop an overall ecosystem management strategy that provides for the protection and recovery of threatened and endangered species. Also, when practical, the Air Force will provide the same protection to candidate and state-listed species.

- **U.S. Navy Instruction, OPNAVINST 5090.1B:** Stipulates that the Navy's policy is to act responsibly in the public interest to restore, improve, preserve, and properly utilize natural resources through incorporating ecosystem management principles on Navy lands. The Navy will use its authorities to further programs for the conservation and recovery of federally listed endangered and threatened species. Furthermore, the Navy encourages cooperation with States and territories to protect state/territory listed rare and endangered species.

- **U.S. Marine Corps Order (MCO) P5090.2A:** States natural resources under the stewardship and control of the Marine Corps will be managed to support the military mission, while preserving, protecting, and enhancing these resources.

### **What are the Provisions of Section 7 of the Endangered Species Act?**

- Section 7(a)(1) provides that all federal agencies, in consultation with FWS and NMFS, shall use their authorities to further the purpose of ESA by carrying out programs for the conservation of endangered and threatened species.

■ Section 7(a)(2) requires federal agencies to ensure, in consultation with FWS and/or NMFS, that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of any endangered or threatened species or result in destruction or adverse modification of critical habitat.

### **How does the Section 7 Process (Interagency Cooperation) Work?**

■ If a proposed DoD action may affect an endangered or threatened species or designated critical habitat, the agency initiates consultation with the FWS or NMFS, as appropriate.

■ Informal consultation consists of any discussions between the federal agencies, applicants, and FWS and/or NMFS to determine if there are ways to avoid adverse effects to listed species and designated critical habitat from the proposed project. If modifications are developed to avoid all such effects, consultation is concluded. It is FWS policy to use informal consultation to the fullest extent possible.

■ If adverse effects are unavoidable, formal consultation is initiated. FWS evaluates the status of the species, the environmental baseline, and the effects of the proposed action to determine if the project may jeopardize the continued existence of the listed species. If critical habitat for the species is designated, the FWS determines whether the project will destroy or adversely modify critical habitat.

■ As a result of formal consultation, the FWS produces a document called a Biological Opinion (BO). If the BO concludes the action is not likely to jeopardize the species or destroy or adversely modify critical habitat, FWS will provide an incidental take statement, which anticipates the amount of take of the species that may occur incidental to the project. The incidental take statement also includes reasonable and prudent measures with specific terms and conditions to be carried out by the federal agency or applicant that will minimize incidental take. The incidental take statement exempts the federal agency and applicant from violating the ESA for the specified amount of take.

■ If a BO concludes the proposed action is likely to jeopardize the continued existence of a species or destroy or adversely modify designated critical habitat, it provides reasonable and prudent alternatives to the proposed action that will avoid jeopardy or adverse modification or destruction of critical habitat. Such

alternatives must be consistent with the intended purpose of the action, be within the authority of the federal agency, and be technologically and economically feasible. If the alternative action may result in incidental take, an incidental take statement will be included.

■ A BO also includes discretionary conservation recommendations that guide a federal agency in using its authorities to further conserve endangered and threatened species.

■ A federal agency or applicant may request an exemption from complying with reasonable and prudent alternatives set forth in a BO by filing an appeal with the Endangered Species Committee. Exemptions granted by the Endangered Species Committee are rare. However, section 7(j) provides for an exemption for reasons of national security.

### **Involvement in the Listing and Critical Habitat Designation Process**

Because DoD lands support numerous listed, proposed, and non-listed species, DoD resource managers should be aware of actions by FWS or NMFS to propose new species for listing, place species on the candidate list, and designate critical habitat. These listings and critical habitat designations may include species and areas found on military lands. It is recommended that DoD installations do the following:

■ Address listed species and designated critical habitat in the development and implementation of INRMPs.

■ Monitor announcements published in the *Federal Register*, to be aware of upcoming proposals for listing or designations.

■ Provide comments on proposed actions. Once a notice is published in the *Federal Register*, installations usually will have 60 days to comment. Comments should be solicited from all applicable installations, major commands or claimants, and headquarters, as necessary. Comments should include:

- Any data or information collected on the installation about the species' presence or its habitat.
- Information on any increases in economic and other relevant impacts from critical habitat, such as increases in administrative burden, conflicts with military mission, and benefits of proposed action.

● Relevant provisions within an existing INRMP

● Any other comments that may affect and/or influence decision-making.

Under section 4(b)(2) of the ESA, an area may be excluded from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of specifying an area as part of critical habitat.

### **Management Plans**

When designating critical habitat, the FWS determines whether an area needs additional special management or protection. If a conservation and management plan, such as an INRMP, already exists, the FWS may decide that the area covered by the plan does not meet the definition of critical habitat.

To qualify, plans/INRMPs must provide:

- A conservation benefit to the species;
- Ensured implementation of the plan; and
- Ensured effectiveness of conservation efforts.

### **References**

■ FWS's Endangered Species Program web page at <http://endangered.fws.gov> offers a variety of information, such as up-to-date lists of threatened and endangered species, proposed and candidates species for listing, state lists, *Federal Register* notices for final and proposed actions, and guidance and instructions.

■ The regulations for interagency cooperation under ESA may be found in the U.S. Code of Federal Regulations at [http://www.access.gpo.gov/nara/cfr/waisidx\\_00/50cfr402\\_00.html](http://www.access.gpo.gov/nara/cfr/waisidx_00/50cfr402_00.html). The FWS/NMFS consultation handbook may be found at <http://endangered.fws.gov>.

■ To read the full text of the Sikes Act Improvement Act or to learn more about DoD's natural resources conservation program, see the Defense Environmental Network & Information eXchange (DENIX) web site at <https://www.denix.osd.mil/denix/Public/ES-Programs/Conservation/conservation.html>.