

Science, Service, Stewardship



Endangered Species Act
Sections 4 and 10 Processes
and Other Useful Stuff

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Protected Resources Division

**NOAA
FISHERIES
SERVICE**

NOAA



Objectives for this Session

- Introduction to the ESA's provisions for scientific research
- NOAA Fisheries regulations for scientific research and salvage/rescue
- Scientific Research Permitting Process
- Salvage and Rescue
- Tribal Resource Management Plans
- Cooperative agreements with states





Endangered Species Act

AN ACT To provide for the conservation of endangered and threatened species of fish, wildlife, and plants, and for other purposes.

- Sec. 2. Findings, purposes, and policy.
- Sec. 3. Definitions.
- Sec. 4. Determination of endangered species and threatened species.
- Sec. 5. Land acquisition.
- Sec. 6. Cooperation with the States.
- Sec. 7. Interagency cooperation.
- Sec. 8. International cooperation.
- Sec. 8A. Convention implementation.
- Sec. 9. Prohibited acts.
- Sec. 10. Exceptions.
- Sec. 11. Penalties and enforcement.
- Sec. 12-18. Endangered Plants, Amendments, etc...



ESA Section 2 – Findings, purposes, and policies

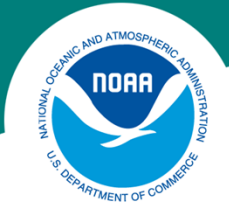
Purposes of the ESA

- To provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved,
- To provide a program for the conservation of such endangered species and threatened species, and
- To take such steps as may be appropriate to achieve the purposes of International treaties and conventions for protected species.



ESA Section 3 – Definitions

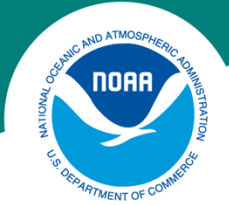
- “Conservation” means to use all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.
- “Species” includes any subspecies and any distinct population segment of any species which interbreeds when mature.
- “Endangered” means any species which is in danger of extinction throughout all or a significant portion of its range.
- “Threatened” means likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.
- “Take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.



ESA Section 4 – Listing Determinations

- Defines the processes and requirements for:
 - Listing a species as endangered or threatened,
 - Designating critical habitat,
 - Issuing protective regulations for threatened species – “4(d) Rules”, and
 - Developing recovery plans.

“Whenever any species is listed as a threatened species...the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to threatened species any act prohibited under section 9(a)(1) with respect to endangered species.”



ESA Section 7 – Interagency Cooperation

“Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency...is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species”



ESA Section 9 – Prohibited Acts

- Except as provided in sections 6 and 10, the listing of a species as endangered makes it unlawful to "take" that species.
- It is also unlawful to violate any regulation pertaining to endangered or threatened species listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.
- Individuals planning to conduct any activity that may "take" an endangered species must obtain written approval from the Secretary to perform that activity.

“Take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.



ESA Section 10 - Exceptions

Sec. 10.(a) Permits.—(1) The Secretary may permit, under such terms and conditions as he shall prescribe—

(A) any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species;

(B) any taking otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

“No permit may be issued by the Secretary authorizing any taking referred to in paragraph (1)(B) unless the applicant therefor submits to the Secretary a conservation plan...”



Regulations Implementing the ESA

Code of Federal Regulations

Title 50—Wildlife and Fisheries

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

Part

- | | |
|---------|--|
| 216 | Regulations governing the taking and importing of marine mammals |
| 221 | Prescriptions in FERC Hydropower Licenses |
| 222 | General endangered and threatened marine species |
| 223 | Threatened marine and anadromous species |
| 224 | Endangered marine and anadromous species |
| 226 | Designated critical habitat |
| 228-296 | More “stuff” for marine mammals and fisheries |





General Permit Procedures (50 CFR 222.301-308)

In determining whether to issue a research permit NOAA Fisheries shall consider:

- Whether the permit was applied for in good faith;
- Whether the permit will not operate to the disadvantage of the endangered species;
- Whether the permit would be consistent with the purposes and policy set forth in section 2 of the Act;
- Whether the permit would further a bona fide and necessary or desirable scientific purpose;
- The status of the population of the requested species and the effect of the proposed action on the population, both direct and indirect;
- Whether alternative non-endangered species or population stocks can and should be used;
- Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application; and
- Opinions or views of scientists or other knowledgeable persons or organizations.



Section 10(a)(1)(A) Permits

- Scientific research or monitoring that involves intentional (or unintentional) take of threatened or endangered species.
- Anyone can apply for a Section 10 permit.
- Applications can be submitted year-round. But the review process typically takes 6-9 months.
- Can be valid for up to 5 years.
- Annual reports are required by January 31st.
- Required for any project involving boat electrofishing or take of endangered species.



4(d) Rules for Threatened Salmon and Steelhead

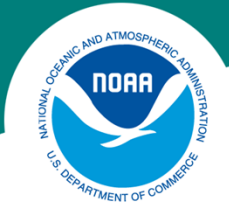
50 CFR Part 223

Section 223.203. Anadromous fish.

- The prohibitions of section 9(a)(1) of the ESA relating to endangered species apply to fish with an intact adipose fin that are part of the threatened species of salmonids.
- There are 13 limits on the take prohibitions.
- The rule prohibits anyone from taking a listed salmon or steelhead *except* in cases where the take is associated with one of the 13 limits.

Section 223.204. Tribal Plans.

- The prohibitions do not apply to any activity that is part of an approved Tribal resource management plan.



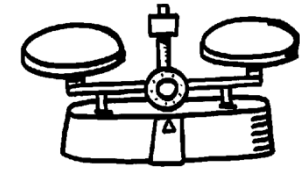
Limits on the Take Prohibitions

- Limit No. 1: ESA Permits
- Limit No. 2: Ongoing Scientific Research
- Limit No. 3: Rescue and Salvage Actions**
- Limit No. 4: Fishery Management
- Limit No. 5: Artificial Propagation
- Limit No. 6: Joint Tribal/State Plans
- Limit No. 7: Scientific Research Activities Conducted by The States**
- Limit No. 8: Habitat Restoration
- Limit No. 9: Water Diversion Screening
- Limit No. 10: Routine Road Maintenance
- Limit No. 11: Portland Parks Integrated Pest Management
- Limit No. 12: Municipal, Residential, Commercial and Industrial Development
- Limit No. 13: Forest Management in Washington



Limit No. 7: Scientific Research Activities Conducted by The States

- NOAA Fisheries may approve “research programs” that adequately conserve listed species and are carried out by state fishery agencies.
- State fishery agencies can allow other agencies or individuals to submit applications, but the fishery agency is ultimately responsible.
- Project applications must be approved by the state fisheries agencies.
- Section 4(d) authorizations apply to researching/monitoring of threatened species only.
- Boat electrofishing cannot be approved under 4(d).
- Authorization is for one year; must be renewed annually.



Research Permit Process

- We review each application for completeness and request a review from our science center and other experts.
- Section 10 permits are posted in Federal Register and subject to a 30-day public comment period.
- The applicant must respond to all comments.
- For 4(d) authorizations, NOAA Fisheries conducts an evaluation and determination as per the conditions of the 4(d) rule.
- NOAA Fisheries conducts an ESA Section 7 consultation on the proposed activity. (Jeopardy and Adverse Modification Analyses)
- NOAA Fisheries conducts an analysis under the National Environmental Policy Act. For most research we make a categorical exclusion determination.
- Marine Mammal Protection Act—no provisions for incidental take in research.



4(d) Limit No. 3 - Rescue and Salvage

Applies to employees or designees of NMFS, USFWS, any Federal land management agency, CDFG, IDFG, ODFW, WDFW, or any other government entity that has co-management authority.

- Aid a sick, injured, or stranded salmonid,
- Dispose of a dead salmonid, or
- Salvage a dead salmonid which may be useful for scientific study.



This exemption from the take prohibitions is to deal with unforeseen circumstances.

Annual report submitted to PRD by Jan 31st identifying the location, numbers, condition, and life stage of fish handled.

Describe why the aid/salvage effort was needed and what if any management or enforcement actions (if applicable) would help prevent the need for future aid efforts.



Tribal Plan 4(d) Limit

- The purpose of the Tribal Plan Limit is to establish a process whereby the conservation needs of listed species are met while respecting Tribal rights, values, and needs.
- Creates a section 4(d) limitation on the ESA section 9 take prohibitions for threatened species.
- Activities undertaken by a tribe, tribal member, tribal permittee, tribal employee, or tribal agent in compliance with a Tribal resource management plan (Tribal Plan).
- Implementing the Tribal Plan will not appreciably reduce the likelihood of listed salmonid survival and recovery.





ESA Section 6 – Cooperation with the States

- Provides a mechanism for cooperation between the Secretary and the States for the purposes of conserving listed, candidate, and recently de-listed species.
- Two types of cooperative agreements: Limited or Full.
- In order to enter into a full agreement, the State must meet all five of the criteria below. For a limited agreement the State must meet the last three criteria.
 - (A) authority resides in the State agency to conserve endangered or threatened species of fish or wildlife;
 - (B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all endangered or threatened species;
 - (C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife;
 - (D) the State agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of endangered or threatened species of fish or wildlife;
 - (E) provision is made for public participation in designating species of fish or wildlife as endangered or threatened.



ESA Section 6 – continued

- A full agreement removes ESA prohibitions for certain species, whereas a limited agreement does not.
 - ESA section 6(g)(2) states that for full agreements the prohibitions set forth in or authorized pursuant to section 4(d) (for threatened species) and section 9(a)(1)(B) (for endangered species) shall not apply.
 - ESA section 6(c)(1)(E)(ii) and 6(c)(2)(E)(ii) state that limited agreements shall not affect the applicability of the prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) of the ESA with respect to the taking of any resident endangered or threatened species.
- NOAA Fisheries has entered into limited cooperative agreements with Oregon and Washington.
- Section 6 program is for non-salmonids.
- The Pacific Coast Salmon Recovery Fund was created for salmonids.

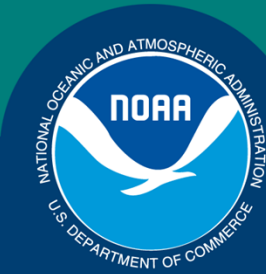


Pacific Northwest Listed Species

- Chinook Salmon
 - Upper Columbia River Spring-run (E)
 - Snake River Spring/Summer-run (T)
 - Snake River Fall-run (T)
 - Lower Columbia (T)
 - Upper Willamette River (T)
 - Puget Sound (T)
- Chum Salmon
 - Hood Canal Summer-run (T)
 - Columbia River (T)
- Coho Salmon
 - Southern Oregon/Northern California (T)
 - Lower Columbia River (T)
 - Oregon Coast (T)
- Sockeye
 - Snake River (E)
 - Ozette Lake (T)
- Steelhead
 - Upper Columbia River (E)
 - Snake River (T)
 - Middle Columbia River (T)
 - Lower Columbia River (T)
 - Upper Willamette River (T)
 - Puget Sound (T)
- Southern DPS of North American Green Sturgeon (T)
- Southern DPS of Eulachon (T)
- Puget Sound/Georgia Basin Rockfishes
 - Bocaccio (E)
 - Canary Rockfish (T)
 - Yelloweye Rockfish (T)
- Southern Resident Killer Whales (E)
- Blue Whale (E)
- Fin Whale (E)
- Humpback Whale (E)
- North Pacific Right Whale (E)
- Sei Whale (E)
- Sperm Whale (E)
- Eastern DPS of Steller Sea Lions (T)
- Turtles
 - Leatherback Sea Turtle (E)
 - Green Sea Turtle (T)
 - Olive Ridley Sea Turtle (T)
 - Loggerhead Sea Turtle (E)

For a complete list of species see <http://www.nmfs.noaa.gov/pr/species/>

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Questions?

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