

Endangered Species Act: Endangered and Threatened Species

Humboldt County is a strong supporter of species conservation. Throughout the County, plant and wildlife biodiversity is supported, and where necessary, protected with conservation initiatives. However, Humboldt County is cognizant that the Endangered Species Act (ESA)¹ has in recent times become a tool wielded by certain organizations to achieve political rather than ecological ends. The listing of a species as threatened or endangered can have the effect of exterminating many economically vital uses on public and private lands. ESA listings have therefore become an expedient for those who aim to eliminate multiple uses on public land and force federal agencies to adopt single-species management—often to the detriment of the environment itself. Through their incessant petitions to list species and aggressive litigation, politically-motivated organizations have sought to force listings irrespective of whether the species in question is genuinely imperiled, or whether more flexible, locally based conservation is an effective or superior alternative. Rural communities, rural economies, and in many cases, the environment itself, have become the victims of these ESA abuses.

Humboldt County believes that if the need to list a species under the ESA can be avoided, everyone, including the species, benefits. A listing under the ESA should therefore be a course of last resort. Preferably, conservation of special status species should be managed early and affirmatively by state fish and wildlife agencies with voluntary education and participation by landowners, permittees, and other stakeholders. There is also a need and obligation for the U.S. Fish and Wildlife Service (FWS) to provide incentives to private parties, organizations, and federal, state, tribal, and local agencies to invest in conservation actions as a means of avoiding listing a species under the ESA.

Humboldt County shall execute and promote the following ESA policies and positions with a view to safeguarding public health, safety, and welfare within the County.

Important FWS Policies:

- ❖ Interagency Policy Regarding the Role of State Agencies in ESA Activities²
- ❖ Policy Regarding Prelisting Conservation Actions³
- ❖ Policy for Evaluating Conservation Efforts (“PECE”)⁴
- ❖ Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities⁵

Positions and Policies:

ESA:

¹ 16 U.S.C. §§ 1531-1544.

² Laws and Policies: Regulations and Policies. Department of Interior, Feb. 22, 2016.

³ FWS Handbook 735 FW 1.

⁴ Federal Register. Vol. 68, No. 60. Friday, March 28, 2003, p. 15100.

⁵ 59 FR 34270: July 1, 1994.

Humboldt County expects that any considerations by the Secretary of Interior to list a species under the Endangered Species Act (ESA) shall be made “solely on the basis of the best scientific and commercial data available,” and only after “taking into account those efforts ... being made by any State ... or political subdivision of a State ... to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction...” (16 U.S.C. 1533 Section 4(b)(1)(a)). Further, Humboldt County expects that the conservation efforts of any agency, individual, organization, association (including RFPAs) or other entity will be affirmatively considered by the Secretary prior to, and during, a listing determination.

NEPA:

Humboldt County expects early notification by all federal agencies to participate in NEPA project teams as a cooperating agency. Humboldt County shall participate as a cooperating agency on all federal agency NEPA analyses for identification of critical habitat and expects that EISs shall include a consistency review with this and other relevant elements of the Humboldt County Master Plan pursuant to 40 CFR § 1502.16(a)(5) and 40 CFR § 1506.2(d). (See Section XX Framework, NEPA).

Pre-Listing:

Consistent with the Interagency Policy Regarding the Role of State Agencies in ESA Activities, the FWS shall use the expertise and solicit information of state agencies to help determine the need to list candidate species, conduct population surveys, implement conservation actions, remove threats, and assist in developing voluntary conservation efforts.

Consistent with 16 U.S.C. 1533 Section 4(b)(1)(a), alternatives to a listing under the ESA should be carefully considered by the FWS, taking into account conservation plans, agreements, initiatives, and public-private partnerships of state, tribal, and local governments, individuals, and organizations that provide appropriate species protection.

- ❖ No species should be listed under the ESA where existing or imminent federal, state, local, private, and individual conservation efforts may reasonably be expected to conserve the species.
 - Prior to considering the listing of a candidate species, the FWS has an affirmative obligation to incentivize and recognize voluntary conservation efforts under its Policy Regarding Prelisting Conservation Actions. Efforts to be considered by the FWS should include, but are not limited to: CCAs, CCAAs, RFPAs, firefighting, and participation in NRCS Working Lands for Wildlife programs.
 - Under the Policy for Evaluation of Conservation Efforts (“PECE”), the FWS must analyze all conservation efforts as a basis for avoiding a listing, downregulating a listing, or removing a listing. Required PECE analysis includes conservation

efforts that have not yet been implemented or have not yet demonstrated whether they are effective. Efforts to be considered by the FWS should include, but are not limited to: CCAs, CCAAs, RFPA firefighting, and participation in NRCS Working Lands for Wildlife programs.

Listing:

Any considerations by the Secretary of Interior to list a species under the Endangered Species Act (ESA) shall be made “solely on the basis of the best scientific and commercial data available,” 16 U.S.C. 1533 Section 4(b)(1)(a).

Not less than 90 days before the effective date of a regulation to implement an ESA determination, designation, or revision, the Secretary shall “give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency in each State in which the species is believed to occur, and to each county or equivalent jurisdiction in which the species is believed to occur, and invite the comment of such agency, and each such jurisdiction...” 16 U.S.C. 1533 Section 4(b)(5)(A).

The Secretary shall “promptly hold one public hearing on the proposed regulation if any person files a request for such a hearing within 45 days after the date of publication of general notice.” 16 U.S.C. 1533 Section 4(b)(5)(E)

Humboldt County supports, and will facilitate as appropriate, the creation of Safe Harbor Agreements (SHAs), Habitat Conservation Plans (HCPs), and Conservation Banks (including the Nevada Conservation Credit System) as a means of ensuring ongoing and uninterrupted land use in the presence of a listed species. Such conservation efforts, in combination with CCAs, CCAAs, and all other recognized conservation efforts (including RFPAs) should be carefully tracked and regularly reviewed by the FWS as contributing factors to a delisting or downlisting.

Cooperation with States:

Upon request, the FWS shall enter into cooperative agreements with the State of Nevada to both assist implementation of, and fund, State conservation of a listed species consistent with ESA § 6.

The FWS shall “cooperate to the maximum extent possible in carrying out ESA programs” with the State of Nevada. Consistent with the Policy Regarding the Role of State Agencies in Endangered Species Act Activities, the FWS shall cooperate with NDOW in prelisting conservation, listing decisions, consultations decisions, habitat conservation planning, and recovery decisions.

Critical Habitat:

Proposed critical habitat designations are subject to environmental review under NEPA. Humboldt County shall participate in all NEPA reviews of proposed critical habitat designations as a cooperating agency, and shall provide expert information and data on economic impacts.

Any proposed critical habitat that would have substantial economic or socio-economic impact should not be designated, provided that such habitat is not essential to the survival of the species in question.

[Note that the below regulations are currently under review for rescission.]

- ❖ ‘ “Economic impacts” may include, but are not limited to, the economy of a particular area, productivity, jobs, and any opportunity costs arising from the critical habitat designation (such as those anticipated from reasonable and prudent alternatives that may be **identified** through a section 7 consultation) as well as possible benefits and transfers (such as outdoor recreation and ecosystem services). “Other relevant impacts” may include, but are not limited to, impacts to Tribes, States, local governments, public health and safety, community interests, the environment (such as increased risk of wildfire or pest and invasive species management), Federal lands, and conservation plans, agreements, or partnerships.’ 50 CFR § 17.90(a).
- ❖ Humboldt County expects that the Secretary shall conduct a critical habitat exclusion analysis pursuant to 50 CFR § 17.90(c) when “[t]he proponent of excluding a particular area (including but not limited to permittees, lessees or others with a permit, lease, or contract on federally managed lands) has presented credible information regarding the existence of a meaningful economic or other relevant impact supporting a benefit of exclusion for that particular area.”
- ❖ “When analyzing the benefits of including or excluding any particular area based on impacts **identified** by experts in, or by sources with firsthand knowledge of, areas that are outside the scope of the Service's expertise, the Secretary will give weight to those benefits consistent with the expert or firsthand information, unless the Secretary has knowledge or material evidence that rebuts that information. Impacts that are outside the scope of the Service's expertise include, but are not limited to:
 - Nonbiological impacts **identified** by State or local governments. [50 CFR § 17.90(d)(1)(ii)]
 - Nonbiological impacts **identified** by a permittee, lessee, or contractor applicant for a permit, lease, or contract on Federal lands.” [50 CFR § 17.90(d)(1)(iv)]

Consultation:

Action agencies (e.g. BLM, Forest Service) must notify permittees and other users of federal land of their ability to, and / or necessity of, applying for “applicant” status for Section 7.

Private applicants (permittees, etc.) shall be involved in the consultation process, and shall be allowed to propose reasonable alternatives in the instance that a proposed action is determined to cause jeopardy to a listed species and/or critical habitat.

In cases where a federal action is required by statute, the Supreme Court has determined that Section 7 consultation is not required.

- ❖ “Because §7(a)(2)’s no-jeopardy duty covers only discretionary agency actions, it does not attach to actions (like the NPDES permitting transfer authorization) that an agency is *required* by statute to undertake once certain specified triggering events have occurred.”

National Association of Home Builders v. Defenders of Wildlife, 551 U.S.644 (2007).

Recovery:

Population recovery goals for listed species should be clearly articulated in recovery plans. When population goals for threatened or endangered species are reached, species should be immediately delisted.

Consistent with FWS policy, the agency shall solicit the expertise of Humboldt County when developing recovery plans for listed species:

- ❖ “Utilize the expertise of and actively solicit independent peer review to obtain all available scientific and commercial information from appropriate local, State and Federal agencies ... during the development of draft recovery plans for listed animal and plant species.” Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities.

Introduction of Listed Species:

Introduction or reintroduction of a listed species has substantial environmental and socio-economic impacts to private residents and the County and must be evaluated under an EIS. No population of a listed species should be introduced or reintroduced in Humboldt County without coordination and cooperating agency participation by the County.