



**U.S. Department of the Interior
Bureau of Ocean Energy Management**



General Information

June 2013

**Endangered Species Act
A Law Enforced by
National Marine Fisheries Service
and
U.S. Fish and Wildlife Service**

Congress passed the Endangered Species Act (ESA) on December 28, 1973, recognizing that the natural heritage of the United States was of “esthetic, ecological, educational, recreational, and scientific value to our Nation and its people.” It was understood that, without protection, many of our Nation’s living resources would become extinct. The purpose of the ESA is to conserve threatened and endangered species and their ecosystems. There are more than 1,900 species listed under the ESA. The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) share responsibility for implementing the ESA.

A “species” is considered

- endangered if it is “in danger of extinction throughout all or a significant portion of its range”; and
- threatened if it is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.”

Federal agencies are directed, under Section 7(a)(1) of the ESA, to utilize their authorities to carry out programs for the conservation of threatened and endangered species. Federal agencies must also consult with NMFS and FWS, under Section 7(a)(2) of the ESA, on **activities that may affect a listed species**.

These interagency consultations, or Section 7 consultations, are designed to assist Federal agencies in fulfilling their duty to ensure Federal actions **do not jeopardize** the continued existence of a species or destroy or adversely modify critical habitat.

Should an action be determined by NMFS or FWS to jeopardize a species or adversely modify critical habitat, a biological opinion is issued. A biological opinion identifies Reasonable and Prudent Alternatives that would allow the project to move forward without violating Section 7(a)(2) consultation.

Biological opinions document NMFS’s and/or FWS’s opinion as to whether the Federal action is likely to jeopardize the continued existence of listed species or to result in the destruction or adverse modification of critical habitat. Where appropriate, biological opinions provide an exemption for the “take” of listed species while specifying the extent of take allowed. Under the ESA, “take” is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to 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.” Reasonable and Prudent Alternatives are necessary to minimize impacts from the Federal action and the Terms and Conditions with which the action agency must comply.

As Federal agencies that may be authorizing activities (permitting geological and geophysical surveys) that may affect listed species, the Bureau of Ocean Energy Management must consult with NMFS and FWS under Section 7 of the ESA. The NMFS issuance of permits under the Marine Mammal Protection Act is a Federal action subject to the interagency cooperation requirements of Section 7 of the ESA. The NMFS is required to ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any threatened or endangered species or result in destruction or adverse modification of habitat for such species.

More information on the ESA can be found on the following websites:

NMFS Website
<http://www.nmfs.noaa.gov/pr/laws/esa/>

FWS Website
<http://www.fws.gov/jeopardy/>