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**Endangered Species Act (1973)**

**Summary**

The Endangered Species Act (ESA;1973) was designed to regulate activities impacting endangered and threatened plants and animals. Section 7 requires federal agencies to ensure their activities will not jeopardize listed species and provides a framework through which the USFWS/NMFS will consult and coordinate with other agencies and entities (Section 7 Consultation). The ESA prohibits actions that affect protected species and their habitats. Exceptions may be granted through a permit (ESA Section 10). These permits are authorized by the United State Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS), depending on the relevant plant, animal, or habitat. Generally, USFWS authorizes permits associated with terrestrial animals and plants, while NMFS authorizes permits related to marine animals and plants. There are several types of permits, including incidental take permits, enhancement and survival permits, and recovery and interstate permits. Violation of the ESA can result in criminal or civil penalties (see fine schedule on google drive).

**Permit Names**

Endangered Species Act

* Enhancement of Survival Permit
* Recovery and Interstate Commerce Permit
* Incidental Take Permit

**Applicability**

* **Enhancement of Survival Permit**

This permit is applicable to non-federal landowners participating in a Safe Harbor Agreement (SHA) or Candidate Conservation Agreement with Assurances (CCAA). This permit is intended to encourage landowners to undertake conservation activities while providing protection against further liabilities.

* **Recovery and Interstate Commerce Permit**

This permit is applicable if the take of a listed species contributes to efforts to the recovery of the species. Examples include scientific research or movement of animals or plants across state lines for breeding programs.

* **Incidental Take Permit**

The incidental take permit is applicable to entities whose activities may result in incidental take or harm to a listed species. This permit requires the applicant to submit a Habitat Conservation Plan (HCP) that includes information regarding the impacts of the proposed take event, mitigation measures, and how the HCP will be funded.

* + “Low Effect” HCP: does not require Environmental Assessment (EA) or Environmental Impact Statement (EIS)
  + If HCP is not “low effect” then EA or EIS is required

The HCP will also include monitoring and compliance terms such as:

* + Accountings of take
  + Surveys to determine species
  + Progress reports on fulfillment of mitigation requirements

The USFWS provides this HCP Toolbox online:

https://www.fws.gov/endangered/what-we-do/hcp-handbook-toolbox.html

General Process (Summarized from *Managing Your Environmental Responsibilities* USEPA):

* + Landowner or responsible entity must determine if it is necessary to apply for an Incidental Take Permit
    - Consult with local or regional USFWS or NMFS office to find out about the possibility of listed species in construction area; determine if construction area may impact critical habitat
    - If species are present, survey site. This could include:
      * Visual surveys (small site)
      * Formal biological survey (larger sites)
    - Determine if activities could impact listed species. Factors to consider:
      * Stormwater/Hydrological
      * Habitat
      * Direct toxicity
    - Determine measures to minimize or mitigate impact
      * Avoid adverse effects by changes to plan or site
      * Contact local USFWS for formal or informal ESA Section 7 consultation to address effects of activities on listed species

**Processing Times and Cost**

Processing times for ESA permits may vary greatly, depending on the permit and specific scenario being proposed.

* Enhancement of Survival Permit
* Recovery and Interstate Commerce Permit
* Incidental Take Permit ($100)
  + “Low Effect”: 3 months
  + HCP requiring EA: 4-6 months
  + HCP requiring EIS: 12 months

**Agency Coordination**

The USFWS and NMFS coordinate on permits associated with plants and animals that may occur in both jurisdictions, such as sea turtles and anadromous fish. Issuance of ESA permits are also contingent upon the applicant acquiring the relevant local, tribal, and state permits. As such, there may be coordination between USFWS, NMFS and these entities.

**Section 7 Consultation**

* Mechanism by which USFWS ensures that actions they take (including those they fund or permit) do not jeopardize listed species
* Informal Consultation
  + Another agency or entity may ask USFWS for informal consultation early in construction process
* Formal Consultation
  + Required when adverse impacts on listed species are likely
  + Agency or entity consult and share information with USFWS
  + May take up to 90 days
  + USFWS prepares Biological Opinion
    - Offers “reasonable and prudent” alternatives of project implementation or “reasonable and prudent” measures to minimize impact of incidental take
    - Applicant may choose the following actions (from <https://www.fws.gov/endangered/what-we-do/faq.html#12>):
      * adopt the reasonable and prudent alternative
      * decide not to undertake the project
      * request an exemption from the Endangered Species
      * reinitiate consultation based on modification of the action or development of a reasonable and prudent alternative not previously considered
      * choose to take other action if it believes, upon review of the biological opinion and best available scientific information, that the action satisfies section 7(a)(2).
    - Regardless of what action the agency chooses, the agency must notify USFWS/NMFS of final decision

**Sources, Tools, and Resources:**

USFWS website (can search for endangered species)

<https://www.fws.gov/endangered/index.html>

NMFS expedited informal consultation:

<https://www.fisheries.noaa.gov/alaska/endangered-species-conservation/expedited-informal-consultation-process-alaska>

NMFS resources to develop Section 7 Request Letter:

<https://www.fisheries.noaa.gov/insight/developing-section-7-request-letter-expedited-informal-consultation>

USFWS Information for Planning and Consulting (IPaC) Tool:

<https://ecos.fws.gov/ipac/>

Permit Information

<https://www.fws.gov/endangered/permits/index.html>

<https://www.fisheries.noaa.gov/insight/understanding-permits-and-authorizations-protected-species>

Link to regional contact information:

<https://www.fws.gov/r7/fisheries/endangered/contact.htm>

HCP Planbook:

<https://www.fws.gov/endangered/what-we-do/hcp_handbook-chapters.html>

***Also see pdfs on google drive folder for factsheets, handbooks, and permit applications***