



# Happy 50th Birthday to the Endangered Species Act!

PRESENTED BY MSBA ENVIRONMENTAL, NATURAL RESOURCES AND ENERGY LAW SECTION  
NOVEMBER 8, 2023

# Presenters

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# I. A Brief History of the Endangered Species Act and its Key Provisions



# Wildlife Protection Statutes Can Do Wonders!

- ▶ USFWS: 99% effective at preventing extinction
- ▶ Approximately 30 delisted due to extinction
- ▶ A cautionary note: USFWS recently delisted 21 species due to extinction, including 1 mammalian species (Little Mariana fruit bat) and 10 bird species (including Bachman's warbler)
- ▶ Were it not for the Act, approximately 200 species expected to have gone extinct

*The ESA works!*



# The ESA Works!

- ▶ The longer species were listed, the more likely they were to improve and less likely they were to decline
- ▶ Species with critical habitat for two or more years were over two times less likely to be declining in the early period and over twice as likely to be improving in the late period than species without critical habitat
- ▶ Species with dedicated recovery plans for two or more years were significantly more likely to be improving and significantly less likely to be declining in both early and late periods, than species without recovery plans

## The Effectiveness of the Endangered Species Act: A Quantitative Analysis

MARTIN F. J. TAYLOR, KIERAN F. SUCKLING, AND JEFFREY J. RACHLINSKI

Population trends for 1095 species listed as threatened and endangered under the Endangered Species Act were correlated with the length of time the species were listed and the presence or absence of critical habitat and recovery plans. Species with critical habitat for two or more years were more than twice as likely to have an improving population trend in the late 1990s, and less than half as likely to be declining in the early 1990s, as species without. Species with dedicated recovery plans for two or more years were significantly more likely to be improving and less likely to be declining than species without. The proportion of species improving increased, and the proportion declining decreased, with increasing time listed throughout the 1990s, irrespective of critical habitat and recovery plans. On the basis of these results, we recommend increased funding for earlier listing of imperiled species and prompt provision of critical habitat and recovery plans.

Keywords: biodiversity, population biology, endangered species, environmental policy

**C**ritics of the US Endangered Species Act (ESA; 16 U.S.C. §§ 1531–1540 [1988]) argue that the recovery of only 13 of some 1300 endangered species is an indication of failure (Mann and Plummer 1995, Pombo 2004). Others contend this is a poor measure of success, because few species have been protected under the ESA long enough to reach full recovery (Doremus and Pagel 2001). The prevention of hundreds of extinctions (NRC 1995, Schwartz 1999) is an important accomplishment, but it does not indicate whether the ESA is effectively moving imperiled species toward recovery. As the ESA enters its 31st year, a comprehensive assessment of its role in species recovery is needed.

Data for such an analysis are available in biennial reports of the US Fish and Wildlife Service, or USFWS (1990, 1992, 1994, 1999, 2003, 2004a), and the National Marine Fisheries Service, or NMFS (1994, 1996, 2002). These reports score species as improving, stable, declining, or unknown for successive two-year periods. Previous studies used single reports to determine whether funding (Miller et al. 2002, Restani and Marzluff 2002), recovery plans (Schultz and Gerber 2002), critical habitat (Clark et al. 2002), and multiple factors (Rachlinski 1997) were correlated with recovery trends. However, these two-year “snapshots” may not reliably reflect long-term population trends.

In this article, we combine trend data to examine correlations with the length of time that species were listed, their critical habitat, recovery plans, kingdom (plant or animal), and listing status (endangered or threatened). In a related paper (Suckling and Taylor 2005), we review the statutory framework and present case studies to illustrate the mechanisms through which critical habitat designation affects species recovery.

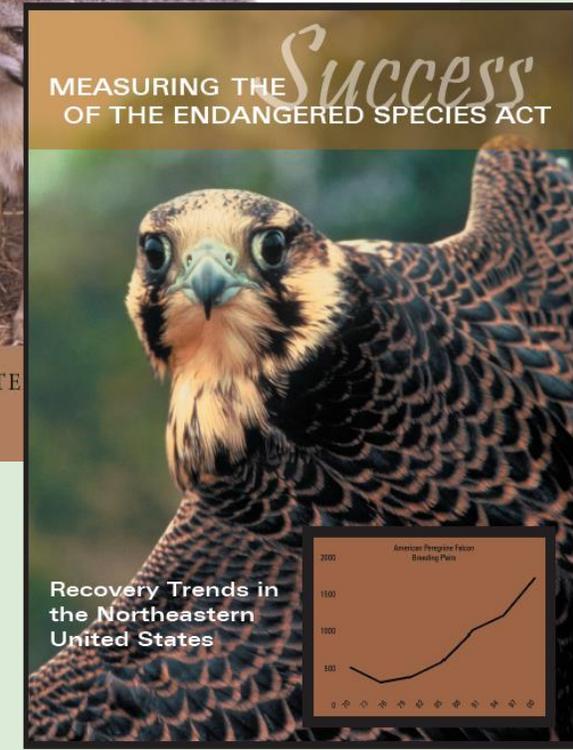
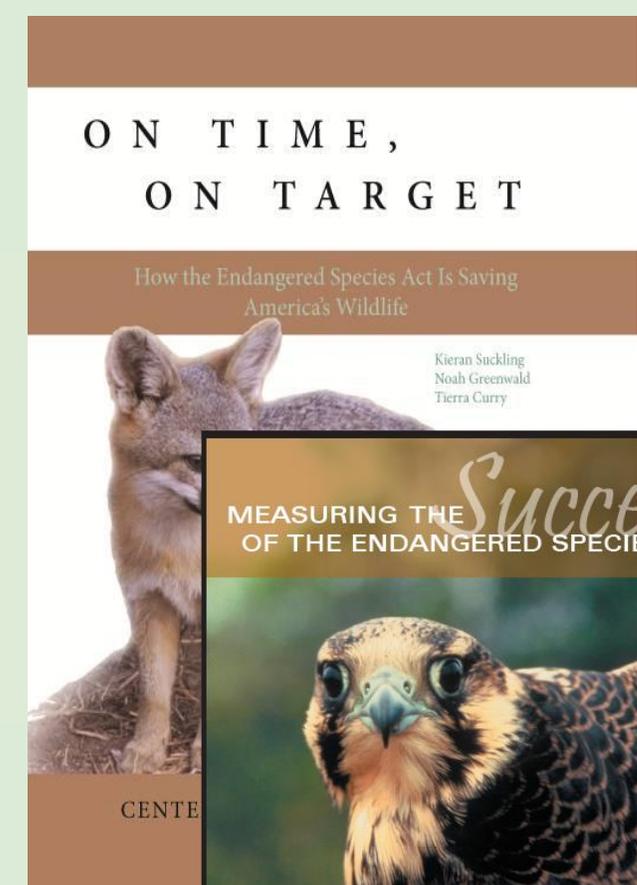
The data from biennial reports were augmented and corrected to account for extinctions, delistings, and recovery. After correction, 1095 species were scored as declining, stable, or improving in at least one report. The data set is available from the authors on request. The agencies’ trend scores are imprecise and subjective (NRC 1995, IG/USDOJ 2003), but there is no reason to expect systematic, agency-wide bias. We assumed that the scores reflected actual population trends and that they were not influenced by knowledge of the presumed independent variables.

Preliminary analysis showed strong correlations between trends and the variables of interest in each biennial report; however, there were clear differences in the patterns of correlations between the early 1990s and later reports. Thus, we divided the data into an early period from 1990 to 1994 and a late period from 1997 to 2002, combining scores for these periods. We rejected conventional repeated-measures regression as a score-combining method, because a single unknown or missing score in any report removed a species from analysis. We also rejected simple score averaging, because it does not account for time directionality. For example, it gives the same trend score of “stable” to a species whose trend

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# The ESA Works!

- ▶ Population growth toward recovery goals: 93% of listed species have either increased or stabilized after being listed under the Endangered Species Act
- ▶ Recovery within the time frame established by federal recovery plans: 82% effective
- ▶ USFWS: “more than 100 species of plants and animals have been delisted based on recovery or reclassified from endangered to threatened based on improved conservation status”



# Passage of the Endangered Species Act

“Nothing is more priceless and more worthy of preservation than the rich array of animal life with which our country has been blessed.

It is a many-faceted treasure, of value to scholars, scientists, and nature lovers alike, and it forms a vital part of the heritage we all share as Americans.”

**Pres. Richard M. Nixon, signing statement for the Endangered Species Act**

- ▶ Precursors passed in 1966 and 1969 protected species “insofar as is practicable”
- ▶ Current law passed in 1973
- ▶ Amended several times
- ▶ Administered by USFWS and NMFS
- ▶ Over 1,600 U.S. plants and animals currently listed as threatened or endangered
- ▶ Rare species overseas and in the oceans are also listed under the Act

# An Endangered RINO?



# Overview of the Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1544

- ▶ Purpose and Policy § 2
- ▶ Definitions § 3
- ▶ Listings § 4
- ▶ Critical habitat § 4
- ▶ Recovery plans § 4
- ▶ Consultation § 7
- ▶ Take prohibition § 9
- ▶ Incidental take and habitat conservation § 10
- ▶ Experimental populations § 10
- ▶ Enforcement § 11



# Overview of the Endangered Species Act, cont.



- ▶ Section 2 – Purposes and Policy: “[A]ll Federal departments and agencies shall seek to conserve endangered species and threatened species....”
- ▶ Section 3 – Definitions: “conserve;” “critical habitat;” “species;” “endangered species;” “threatened species;” “take”
- ▶ “conserve” means to use all methods and procedures which are necessary to bring any listed species to the point at which the measures provided by ESA are no longer necessary.

# Overview of the Endangered Species Act, cont.



- ▶ Section 4(a) – Criteria For Listing as Endangered or Threatened Species:
  - ▶ 1) Habitat destruction;
  - ▶ 2) Overutilization for commercial or other purposes;
  - ▶ 3) Disease or predation;
  - ▶ 4) Inadequate existing regulatory mechanisms
  - ▶ 5) Other natural or manmade factors
- ▶ Section 4(b) – Basis For Determination: “best scientific and commercial data available”
- ▶ Section 4(f) – Recovery Plans: required for each listed species



**“solely on the basis of the best scientific and commercial data available”**

# Citizen Listing Petitions

- ▶ Example: 2012, Center for Biological Diversity filed the largest-ever petition focused on amphibians and reptiles – 53 species
- ▶ 5 years later: 36 positive findings, 17 negative
- ▶ Still today, species are getting listed from CBD's work here: The western pond turtle and the short-tailed snake were listed just this fall!

BEFORE THE SECRETARY OF THE INTERIOR

PETITION TO LIST 53 AMPHIBIANS AND REPTILES  
IN THE UNITED STATES AS THREATENED OR ENDANGERED SPECIES UNDER  
THE ENDANGERED SPECIES ACT



CENTER FOR BIOLOGICAL DIVERSITY

JULY 11, 2012

1

# Section 4: Critical Habitats

- ▶ Critical habitat: areas essential for the survival and recovery of listed species
- ▶ Determination based on best science and consideration of economic impact
- ▶ Supposed to be designated at the time of listing
- ▶ Includes occupied and unoccupied habitat
- ▶ Private land can be designated, but only where a “federal nexus” is involved
- ▶ Habitat loss is driving factor for extinction for most species



# Section 4: Recovery Planning



- ▶ Furthers ESA's goal of Recovery
- ▶ Recovery plans are a blueprint to bring the species to a self-sustaining level
- ▶ Recovery plans are non-binding but must be prepared
- ▶ Achievement of recovery plan goals is not the same as delisting

# Overview of the Endangered Species Act, cont.



- ▶ 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 [critical] habitat ....”
- ▶ Section 7 – Biological Opinions: “If jeopardy ... is found, the Secretary shall suggest those reasonable and prudent alternatives which he believes would not violate ... this section ....”
- ▶ When Biological Opinion concludes no jeopardy, but that species will be taken, must include an “incidental take statement”

# Overview of the Endangered Species Act, cont.



- ▶ Section 9 – Prohibited Acts: “import;” “take;” “sell;” “transport”
- ▶ Section 10 – Incidental Take Permits: Available if “taking is incidental to, and not the purpose of ... an otherwise lawful activity.”
- ▶ Section 10 – Habitat Conservation Plans must be in place to identify the impact of incidental take, steps taken to minimize take and what alternatives considered
- ▶ Section 11 – Enforcement:
  - ▶ Civil and criminal penalties
  - ▶ Citizens’ suits
  - ▶ 60-day notice requirement
  - ▶ Attorneys’ fees at regular hourly rates



# Section 10(j): Experimental Populations

- ▶ Introduced in 1982 amendments to ESA to foster reintroduction efforts
- ▶ Gives feds authority to reintroduce listed animals to unoccupied lands if the agency “determines that such release will further the conservation” of the species. 16 U.S.C. § 1539(j).
- ▶ Two types: essential and nonessential
- ▶ Reintroduced species can receive less protection
- ▶ Yellowstone/Central Idaho wolf reintroduction in 1990s, poster child for successful reintroductions



# *TVA v. Hill*: Early Judicial Endorsement of the Purpose and Policy of the ESA

- ▶ The U.S. Supreme Court held that the ESA is “the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978).
- ▶ The Supreme Court specifically noted that, “the plain intent of Congress in enacting this statute was to halt and reverse the trend towards species extinction, whatever the cost,” and found that this intent was “reflected not only in the stated policies of the Act, but in literally every section of the statute.” *Id.* at 184.
- ▶ The ESA, “reveals a conscious decision by Congress to give endangered species priority over the ‘primary missions’ of federal agencies.” *Id.* at 185.

# *Sierra Club v. Clark*, 755 F.2d 608 (8th Cir. 1985)



- ▶ Challenged 1983 USFWS regulations that granted Minnesota DNR's request for public sport trapping season on threatened wolves
- ▶ FWS argued that it had discretion to allow sport trapping based on distinction in ESA between endangered and threatened species
- ▶ Eighth Circuit ruled that a sport season on a threatened species was contrary to plain language of ESA, statutory structure, and legislative history



# *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)

- ▶ Finds private environmental plaintiffs lack Article III standing to challenge lack of Section 7 consultations on federally funded projects overseas that may affect endangered species
- ▶ Merits of challenge to Secretary's limitation of Section 7 consultation to domestic projects never reached or resolved



# 2011: Congress Behaving Badly



- ▶ In response to Montana district court decision in *Defenders of Wildlife v. Hall*, 565 F. Supp. 2d 1160 (D. Mont. 2008), invalidating a 2007 Wolf Delisting Rule in Northern Rockies states, Congress passes a rider to an appropriations bill, directing FWS to reissue delisting rule for Northern Rockies wolves, and providing that reinstated rule “shall not be subject to judicial review”
- ▶ March 2012: Ninth Circuit upholds 2011 Appropriations Act rider precluding judicial review of reissued 2009 rule delisting northern Rocky Mountain wolves against legal challenge which argued that appropriations acts cannot overrule policy statutes



## II. How the Endangered Species Act Works on the Ground

Mandy Bohnenblust, Merjent Inc.

# ESA and the Consultant

- ▶ What hasn't changed with the ESA?
  - ▶ Take is always prohibited
  - ▶ It applies to everyone. All the time.

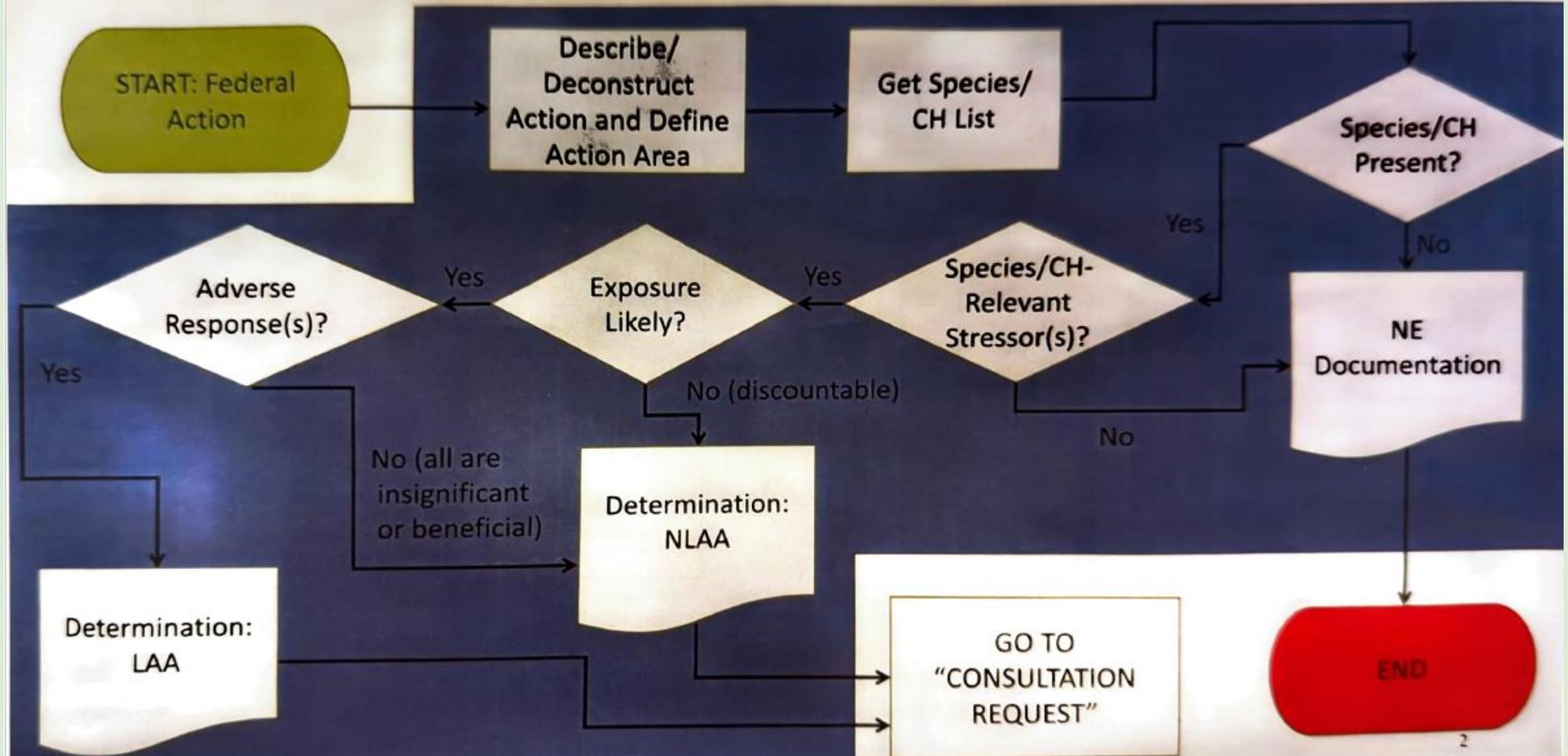


# ESA and the Consultant

- ▶ What has changed?
  - ▶ Listing status of individual species
  - ▶ 4(d) Rules more prevalent
  - ▶ Determination Keys

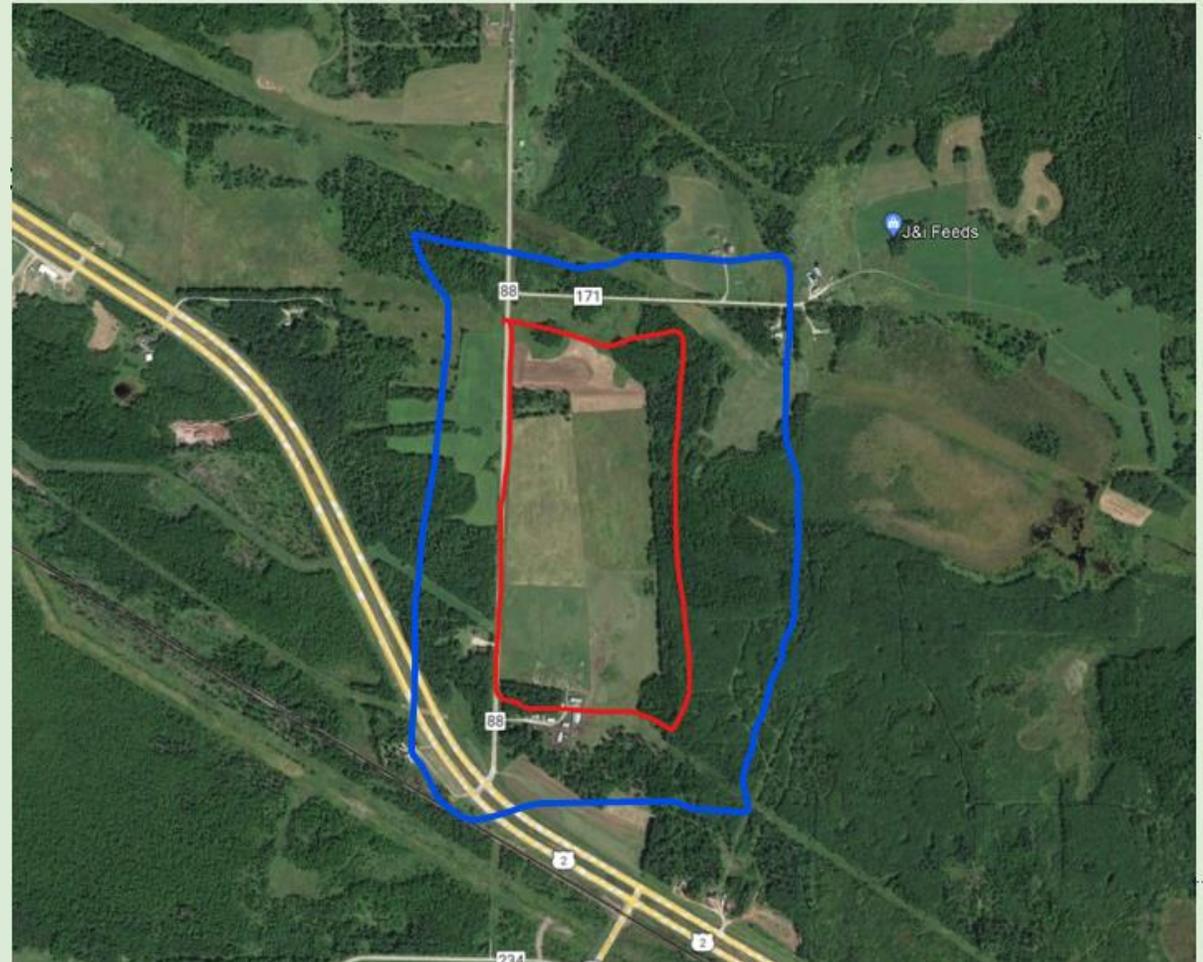


# ACTION AGENCY DETERMINATIONS



# Consultant's Role

- Step 1 - Determine list of species and critical habitat using the U.S. Fish and Wildlife Service (USFWS) Information Planning and Consultation (IPaC) System (<https://ecos.fws.gov/>)
- Step 2 - Desktop review for potential suitable habitat
- Step 3 – Determination Keys, if applicable
- Step 4 - Potential surveys for habitat or individuals
- Step 5 - Coordinate/consult with USFWS



# Solar Project – Itasca County, MN

**IPaC** Information for Planning and Consultation  
MY PROJECTS

**U.S. Fish & Wildlife Service**  
MANDY BOHNENBLUST ▾

## Resources

ENDANGERED SPECIES	5
BALD & GOLDEN EAGLES	1
MIGRATORY BIRDS	7
FACILITIES	
WETLANDS	!

[PRINT RESOURCE LIST](#)

### What's next?

Define a project at this location to evaluate potential impacts, get an official species list, and make species determinations.

[DEFINE PROJECT](#)

**Threatened**



**CH**

**Canada Lynx**  
*Lynx canadensis*

**Threatened**



**CH**

**Gray Wolf**  
*Canis lupus*

**Endangered**



**Northern Long-eared Bat**  
*Myotis septentrionalis*  
Wherever found

**Proposed Endangered**

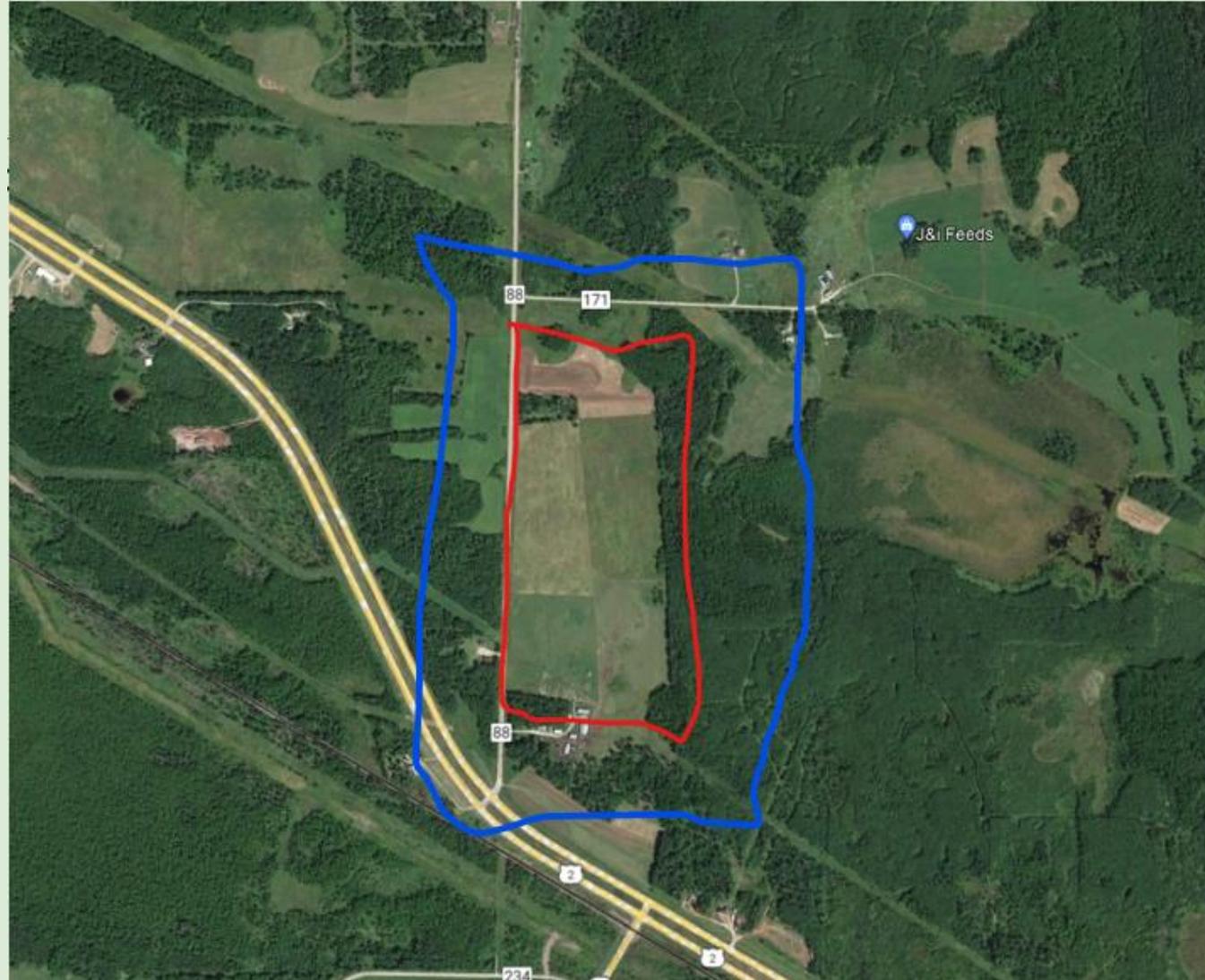


**Tricolored Bat**  
*Perimyotis subflavus*

# Solar Project – Itasca County, MN

Species	Status	Suitable Habitat
Canada lynx	Threatened	Boreal and northern hardwood forest with deep snow and high densities of snowshoe hares
Gray wolf	Threatened	Temperate forests, mountains, tundra, taiga, grasslands and deserts.
Northern long-eared bat	Endangered	Winter: Hibernates in caves and mines Fall: Swarms in surrounding wooded areas Summer: Roosts in upland forest
Tri-colored bat	Proposed	Forested habitats where they roost in trees, primarily among leaves.

# Solar Project – Itasca County, MN



# Solar Project – Determination Keys

11. Is suitable summer habitat for the northern long-eared bat present within 1000 feet of project activities?  
(If unsure, answer "Yes.")

**Note:** If there are trees within the action area that are of a sufficient size to be potential roosts for bats (i.e., live trees and/or snags  $\geq 3$  inches (12.7 centimeter) dbh), answer "Yes". If unsure, additional information defining suitable summer habitat for the northern long-eared bat can be found at: <https://www.fws.gov/media/northern-long-eared-bat-assisted-determination-key-selected-definitions>

Yes

12. Will the action cause effects to a bridge?

No

13. Will the action result in effects to a culvert or tunnel?

No

14. Does the action include the intentional exclusion of northern long-eared bats from a building or structure?

**Note:** Exclusion is conducted to deny bats' entry or reentry into a building. To be effective and to avoid harming bats, it should be done according to established standards. If your action includes bat exclusion and you are unsure whether northern long-eared bats are present, answer "Yes." Answer "No" if there are no signs of bat use in the building/structure. If unsure, contact your local U.S. Fish and Wildlife Services Ecological Services Field Office to help assess whether northern long-eared bats may be present. Contact a Nuisance Wildlife Control Operator (NWCO) for help in how to exclude bats from a structure safely without causing harm to the bats (to find a NWCO certified in bat standards, search the Internet using the search term "National Wildlife Control Operators Association bats"). Also see the White-Nose Syndrome Response Team's guide for bat control in structures

No

15. Does the action involve removal, modification, or maintenance of a human-made structure (barn, house, or other building) **known or suspected to contain roosting bats**?

No

16. Will the action cause construction of one or more new roads open to the public?

For federal actions, answer 'yes' when the construction or operation of these facilities is either (1) part of the federal action or (2) would not occur but for an action taken by a federal agency (federal permit, funding, etc.).

No

17. Will the action include or cause any construction or other activity that is reasonably certain to increase average daily traffic on one or more existing roads?

**Note:** For federal actions, answer 'yes' when the construction or operation of these facilities is either (1) part of the federal action or (2) would not occur but for an action taken by a federal agency (federal permit, funding, etc.).

No

- Minnesota-Wisconsin Federal Endangered Species Determination Key

Release date: September 8, 2023

This key is a tool to help Federal agencies and project proponents decide if their proposed action has the potential to adversely affect Federally listed species and designated critical habitat on certain routine and predictable projects in MN and WI.

EVALUATE

SKIP / DOES NOT APPLY

- Northern Long-eared Bat Rangewide Determination Key

Release date: October 19, 2023

This key is intended to streamline review of projects for potential effects to the Northern Long-eared Bat (*Myotis septentrionalis*).

EVALUATE

SKIP / DOES NOT APPLY

# Solar Project – Field Surveys

- ▶ Qualified biologist
- ▶ Permitted by the Service
- ▶ Habitat vs. Presence/Absence
- ▶ Timing



# Solar Project – Itasca County, MN



## ESA CONSULTATION INITIATION TEMPLATE

Project Name  
Biological Assessment

Action Agency

Date

### I. Background / History

This section should include a summary of the information on which the biological assessment is based, detailing how the agency action [applicant action] affects the species and critical habitat (Sec 7 (b)(3)(A)).

#### **A. Project History**

##### i. Documentation of Relevant Correspondence

The following types of records should be included as appropriate: letters, memoranda, public notices, summaries of meetings and telephone conversations, applicable emails, etc.

##### ii. Supplemental Information, General Background, Purpose of Project

The BA should include a summary of submitted items such as EIS's, spill plans, monitoring plans, etc. Supporting documents should specifically include any rare or difficult to obtain documents.

#### **B. Federal Action History (Discussion of Past Consultations Relevant to the Proposed Project)**

This section should include a summary of any informal consultation, prior formal consultations of the action, documentation of the date consultation was initiated, a chronology of subsequent requests for additional data, extensions, and other applicable past or current actions. Conclusions reached in earlier informal and formal consultations on the proposed action also may be relevant. This section may include early consultation efforts with the Services and submittal of species list requests to the federal Services. This provides readers of the BA with evidence that the required documents have been requested and received by the project biologist or action agency.

### II. Description of the Action and Action Area

#### **A. Discussion of Federal Action and Legal Authority / Agency Discretion**

The Act requires action agencies to consult or confer with the Services when there is discretionary Federal involvement or control over the action, whether apparent (issuance

# Solar Project – Itasca County, MN

- ▶ Biological Assessment
  - ▶ Introduction
  - ▶ Project Description
  - ▶ Action Area
  - ▶ Species/Critical Habitat Considered
  - ▶ Effects Analysis
  - ▶ Conclusion and Determination of Effects

# Solar Project – Itasca County, MN



# Other ESA Nuances

- ▶ “May Affect, Likely to Adversely Affect”
- ▶ Plants
- ▶ Proposed Species – Conferencing
- ▶ How we help our clients
  - ▶ Avoiding ‘take’
  - ▶ Education



# Working with Attorneys

- ▶ Unanticipated take
- ▶ Purposeful take
- ▶ Enforcement actions
- ▶ Federal Action Agency Assistance



# III. Using the ESA to Push for On-the-Ground Conservation Measures in Minnesota

- ▶ Section 7 and Section 10 force conservation measures in exchange for take coverage
- ▶ How the “Habitat Conservation Plan” and “Incidental Take Permit” process should work
- ▶ Recent Minnesota examples: rusty-patched bumblebee and Canada lynx
- ▶ Takeaways



# ESA Section 7 versus Section 10

- ▶ What: Federal actions, such as federal permits, approvals of private actions on federal land, federal funding
  - ▶ Process: Section 7 consultation between action agency and expert wildlife agency
  - ▶ Outcome: Biological opinion with Incidental Take Statement
  - ▶ Why: No liability under Section 9 in exchange for “terms and conditions” and “reasonable and prudent measures”
- ▶ What: Non-federal actors, including cities, states, or private entities
  - ▶ Process: Development of “Habitat Conservation Plan”
  - ▶ Outcome: Issuance of “Incidental Take Permit”
  - ▶ Why? No liability under Section 9 in exchange for implementing the HCP

# How the HCP/ITP Process Should Work

- ▶ Non-federal entity realizes that their project could hurt endangered species so contacts FWS to start the HCP process
- ▶ Drafts a HCP that explains how the action will impact the species, how the actor will MINIMIZE and MITIGATE impacts to the listed species, how it will be funded
- ▶ If approved, then FWS will issue an ITP that excuses a certain level of take
- ▶ FWS's issuance of an ITP is a federal action that triggers duty to consult under ESA Section 7 and NEPA compliance

**U.S. Fish & Wildlife Service**  
**Habitat Conservation Plans Under the Endangered Species Act**

**Introduction**  
Why should we save endangered species? Congress answered this question in the introduction to the Endangered Species Act of 1973 (ESA), recognizing that endangered and threatened species of wildlife and plants "are of aesthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people."

After this finding, Congress said that the purposes of the Act are "... to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved; and to provide a program for the conservation of such species..." Habitat Conservation Plans (HCPs) under section 10(a)(2)(D) of the Act provide for partnerships with non-Federal parties to conserve the ecosystems upon which listed species depend, ultimately contributing to their recovery.

**What are HCPs?**  
HCPs are planning documents required as part of an application for an incidental take permit. They describe the anticipated effects of the proposed taking, how those impacts will be avoided, or mitigated, and how the HCP is to be funded.

HCPs can apply to both listed and unlisted species, including those that are candidates or have been proposed for listing. Conserving species before they are in danger of extinction or are likely to become so can provide early benefits and prevent the need for listing.

**Who needs an incidental take permit?**  
Anyone whose otherwise lawful activities will result in the "incidental take" of a listed wildlife species needs a permit. The U.S. Fish and Wildlife Service (FWS) can help determine whether a proposed project or action is likely to result in "take" and whether an HCP is needed. FWS staff can also provide technical assistance to help design a project to avoid take. For example, the project could be designed with seasonal restrictions on road runoff to minimize disturbance to a species.

**What is the benefit of an incidental take permit and habitat conservation plan to a private landowner?**  
The permit allows the permit holder to legally proceed with an activity that would otherwise result in the unlawful take of a listed species. The permit holder also has assurances from the FWS through the "No Surprises" regulation.

**What is "take"?**  
The Act defines "take" as "... to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." "Harm" includes significant habitat modification that adversely affects or injures a listed species through impairing essential behavior such as breeding, feeding, or sheltering.

The endangered California tiger salamander is among the listed species included in the final Federal Onshore Outer Continental Shelf Habitat Conservation Plans.

Section 9 of the Act prohibits the take of endangered and threatened species. The purpose of the incidental take permit is to exempt non-Federal permit holders—such as States and private landowners—from the prohibitions of section 9, not to authorize the activities that result in take.

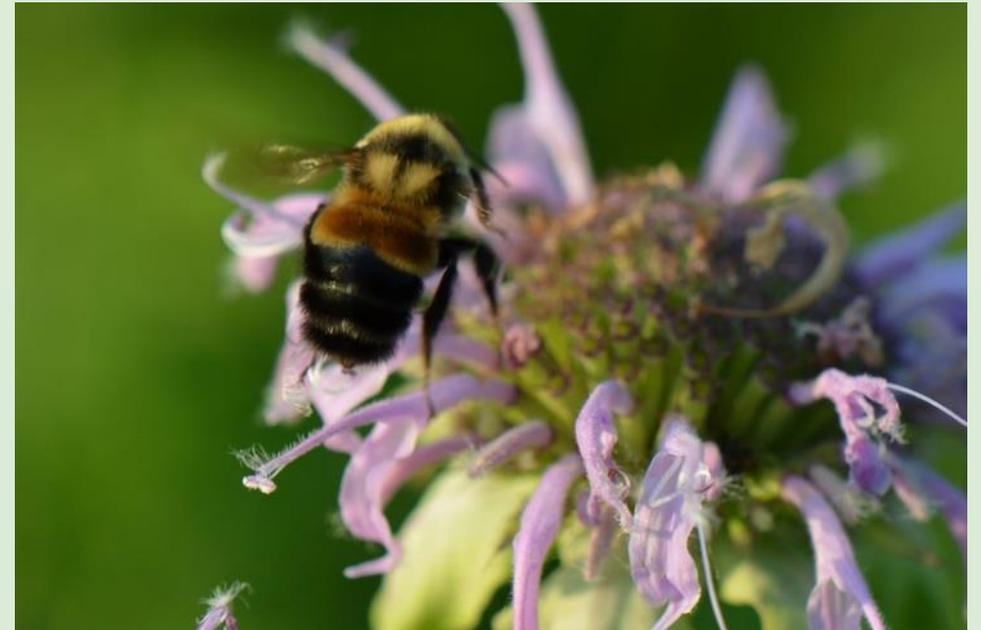
**What do habitat conservation plans do?**  
In developing habitat conservation plans, people applying for incidental take permits describe measures designed to minimize and mitigate the effects of their actions—to ensure that species will be conserved and to contribute to their recovery.

Habitat conservation plans are required to meet the permit issuance criteria of section 10(a)(2)(D) of the Act:

- (i) taking will be incidental,
- (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the taking.

# City of Minnetonka and the Rusty-patched Bumblebee

- ▶ City of Minnetonka planned a 5-mile mountain bike course in Lone Lake Park, occupied by rusty-patched bumblebees
- ▶ City sought voluntary guidance from FWS. No HCP and no ITP.
- ▶ Voluntary guidance insufficient to prevent take
- ▶ Center sent Section 9 NOI in early August 2020
- ▶ Intense negotiations with the City and jointly announce settlement in late September
- ▶ Minimize impacts: timing, placement, monitoring
- ▶ Mitigate impacts: habitat creation, restoration



# Minnesota DNR and the Canada Lynx

- ▶ Recreational/commercial trapping program regularly catches listed Canada lynx
- ▶ No ITP to cover the unlawful take
- ▶ Previous 2008 litigation by the Center compelled application for ITP and interim changes to traps to reduce risk to lynx
- ▶ Lynx keep getting killed so Center files a second case, defeats MTD, enters settlement with DNR over opposition from Minnesota Trappers
- ▶ Center agrees not bring another case for 7 years in exchange for numerous on-the-ground protections: lethal neck snare ban
- ▶ Trappers appeal



# Takeaways



- ▶ The ESA has strong provisions to push on-the-ground conservation
- ▶ Watchdog groups like the Center for Biological Diversity needed to enforce ESA
- ▶ Some threats easier to address using the ESA:
  - ▶ Reform traps and help lynx
  - ▶ Revise mountain bike course to help bee
- ▶ Saving life on earth is harder to achieve through the ESA in other circumstances:
  - ▶ Where threats from numerous sources, like freshwater mussels threatened by historical dams and water pollution
  - ▶ Climate change: FWS precludes consideration of threat of climate change when enforcing the ESA for the polar bear

# Questions?



# Happy 50th Birthday to the Endangered Species Act!

PRESENTED BY MSBA ENVIRONMENT AND NATURAL RESOURCES SECTION

NOVEMBER 8, 2023