



Rangeland FAQ Series

Science & Solutions for the Range

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Sage-grouse lekking in rangelands grazed by cattle.

Photo credit: USDA via Flickr.

How Can the Endangered Species Act Affect Rangeland Activities?

The Endangered Species Act (ESA) was passed in 1973 with the simple goals of protecting species in danger of becoming extinct and preserving their habitat. However, the ESA can feel like a cloud of uncertainty hovering over many rangeland users, including ranchers, because of the complexity of conserving species, the uncertainty and fears over how the ESA may restrict land uses, and the consequences of violating the law. This document explains how species are evaluated for listing under the ESA and suggests options for landowners who want to avoid ESA-imposed restrictions on uses and activities.

What is the Endangered Species Act?

The ESA was enacted to protect and preserve species in danger of extinction and recover those species to a point where the protections of the ESA are no longer necessary. Two federal agencies are responsible for enforcing the ESA. The U.S. Fish and Wildlife Service is responsible for terrestrial and fresh-water organisms including plants, wildlife, and fish. The National Marine Fisheries Service oversees marine life, including anadromous fish (like salmon), which spend a portion of their life in the ocean.

Key Points

- All activities that take or harm a threatened or endangered species become illegal under the ESA on federal, state, and private lands, with only a few notable exceptions.
- Activities that affect a threatened or endangered species or its habitat may need to undergo formal evaluation.
- Candidate Conservation Agreements with Assurances (CCAA) are voluntary landowner agreements where lands are managed to remove or reduce threats to candidate or listed species.
- It is not easy to predict how grazing, development, or recreation on rangelands may need to be altered or curtailed if a species is listed under the ESA.

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Both of these agencies are referred to collectively as the “Service” in this document.

Any person or organization can petition the Service to consider a species for protection under the ESA. If the best scientific information indicates a species is in danger of extinction throughout all or a significant portion of its range, a species may be designated as *endangered*. If a species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, it may be designated as *threatened*. The Service also maintains a list of *candidate* species (warranted for listing but precluded due to other listing priorities) which are being studied and considered for listing under the ESA. Candidate species are still managed by the individual states and carry with them no ESA protections.

The ESA makes it illegal to take, harm, or harass a threatened or endangered species. The term *take* is broadly defined under the ESA as “[to] harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.” An animal does not have to be killed for take to occur. Take could also occur through detrimental changes to important habitat in a way that impairs the breeding, feeding, and sheltering of a species, possibly leading to its death or impairing its ability to reproduce. Ranching activities such as grazing, haying, mowing, herbicide spraying, burning, water sources development, or fence building could be restricted depending on the species and its habitat requirements or behavior. Specific recreational activities could similarly be restricted if they could result in take. Moreover, “ignorance is not bliss” when it comes to the ESA. Individuals are not exempt from consequences of take just because they did not know their activities could lead to take of a listed species. If convicted, penalties for take violations could include civil or criminal fines from \$25,000 to \$50,000 and could even result in a prison sentence.

How does the Endangered Species Act apply to private lands?

Any activity that takes or harms a listed species on public or private lands is illegal under the ESA unless the activity is explicitly listed as exempt in a special federal permit or authorization. Rangeland uses such as recreation, grazing, and vegetation management could potentially be prohibited or restricted to protect a threatened or endangered species. Private landowners may request information from the Service, and related federal and state wildlife agencies, to determine if listed species occur on their property, and how to avoid violating the ESA.

Not all private lands are treated the same with respect to the ESA. Projects involving federal permits or federal assistance (e.g., USDA Farm Bill program funds) require review to ensure that activities are not negatively impacting any listed species. This requirement stems from language in the ESA prohibiting federal agencies from permitting, funding, or conducting activities that may take a listed species or jeopardize its existence. For example, a producer with private land enrolled in a program receiving federal assistance has a *federal nexus* that requires consultation with the Service about curtailing or modifying activities to minimize impact on listed species (see “Section 7 Consultation”, discussed below). Rangeland

management activities may need to be halted, interrupted, limited, or revised if these activities are supported by federal funds and also viewed as jeopardizing the continued existence of an endangered or threatened species.



Photo credit: USFWS Mountain Prairie via Flickr.

Pygmy rabbits are highly dependent on sagebrush rangelands for food and shelter.

What can be done to prevent or prepare for a listing?

One way to avoid confronting ESA restrictions is to improve habitat or change activities preemptively to benefit specific plants or animals in order to keep them from becoming listed as threatened or endangered. Beneficial actions could include controlling invasive plants, maintaining important nesting or foraging habitat, and removing structures that interfere with animal movements. Several federal and state programs provide information and financial support for habitat conservation efforts that proactively address species of concern.

The Service can develop plans and sign agreements, called Candidate Conservation Agreements (CCA), with individuals or groups that manage or own private or public lands to encourage conservation efforts. In these agreements, the Service works with partners to implement conservation activities that improve habitat and/or reduce threats to candidate species.

The Service can work with landowners to develop conservation plans for species that are not currently listed and offer assurances that reduce ESA restrictions if the species eventually becomes listed. A Candidate Conservation Agreement with Assurances (CCAA) is a voluntary agreement between private landowners and the Service in which landowners agree to manage their lands in such a way as to remove or reduce threats to candidate species at risk of being listed as endangered or threatened. Landowners entering into a CCAA are granted two basic assurances. First, if the species is ultimately listed under the ESA, the landowner cannot be guilty of a take that inadvertently occurs during activities that comply with the CCAA. In these situations, landowners will be granted an *incidental take* permit for activities that unintentionally cause harm during an otherwise lawful and authorized activity. Examples of incidental take include the animal being hit by ranch vehicles, killed

by haying equipment, or injured if they strike fences. Second, the landowner does not have to devote more resources or engage in activities for the sake of species recovery beyond those requirements mutually agreed to in the CCAA, even if new information about the species comes to light. This is called the *no surprises* policy.

Another benefit of CCAAs is that they can be developed for a range of ownerships, including leased private lands, state lands, or common allotments of state or private lands so that provisions of the CCAA are seamless across land ownerships. Developing a CCAA across state or private land can simplify complex regulations specific to different ownerships and ensure that activities can continue uninterrupted if a species addressed in the CCAA is subsequently listed.

The many nuances of rangeland management and conserving listed species require CCAAs to be developed on a case-by-case basis for specific properties. While CCAAs can offer valuable assurances to private landowners, they require significant money and time to develop (typically six months to several years, depending on complexity). *Umbrella* CCAA templates have been created to simplify the process by outlining primary threats and conservation measures for an individual species across a large area. Farmers and ranchers can use these templates to create site-specific plans to establish a CCAA. An example is the "Greater Sage-Grouse Umbrella CCAA for Wyoming Ranch Management" (www.fws.gov/wyominges/Pages/Landowner-Tools/CCAA/CCAA_GSG.html).

Rangeland owners concerned about a species being considered for listing may also participate in a Working Lands for Wildlife (WLFW) conservation agreement to gain a level of regulatory certainty if the species is listed. The WLFW is a partnership between the Fish and Wildlife Service and the Natural Resources Conservation Service where landowners receive assurance that they will be allowed incidental take if the species is inadvertently harmed while implementing conservation practices covered in the WLFW agreement. There are currently seven species for which WLFW programs exist, including the Sage-Grouse Initiative (SGI), for which there are 39 approved management actions that vary from grazing systems to firebreaks. The WLFW agreements differ from CCAAs in that they only cover specific land management actions and projects, whereas a CCAA is a comprehensive land-based management plan.

What happens after a species is listed?

Nobody can predict with certainty if a species that has been petitioned for listing under the ESA will be listed. However, once a species is listed as either threatened or endangered, ESA protections are immediately in effect and taking or harming the species becomes illegal. Upon a listing, federal agencies must examine all activities on federal lands, and those activities for which they fund or issue permits on private lands, to ensure those activities do not adversely affect the species or its habitat. Federally funded projects and activities on federal land that are likely to affect the species must cease until the agency overseeing the activity evaluates its potential effects and consults the Service to determine necessary changes, incidental take permits, or prohibitions.

After a species is listed, the Service has the option of designating critical habitat to specify geographic areas essential for conservation of the species. Critical habitat can be designated on any area,

regardless of ownership, even if it is not federal land. However, designations of critical habitat only restrict federal actions, or federally funded activities, and have no effect on state or private lands that do not have a federal nexus.

How can an ESA listing affect grazing and other uses of federal lands?

Any rangeland activity that requires a permit on federal lands, including grazing, obligates the agency permitting the activity to evaluate how that proposed activity will likely affect a listed species and its habitat. The responsible agency (e.g., the Bureau of Land Management, or the U.S. Forest Service) then issues a *Biological Assessment* summarizing whether a potential activity or project is likely to impact the listed species. Subsequent steps based on this determination are listed below.

Biological Assessment Determination	Initial Action	Further Action by Service
Proposed activity unlikely to affect	Permit granted without further analysis or need for consultation with Service	None
Proposed activity may affect, but is not likely to adversely affect listed species	Management agency must consult with the Service about proposed activity and necessary conservation measures	Service will issue a Letter of Concurrence; proposed activity will be allowed as outlined in the Biological Assessment and Letter of Concurrence
Proposed activity may affect, and is likely to adversely affect listed species	Management agency must consult with the Service (Section 7 Consultation) about how proposed activities should be conducted, changed, or curtailed to ensure activities do not jeopardize the listed species	Service will publish their findings and requirements in a Biological Opinion, which provides incidental take coverage to the management agencies for specified activities

Is there a difference between how endangered and threatened species are addressed under the ESA?

Both threatened and endangered species are protected from take under the ESA. However, there is an important difference in how the Service regulates forms of take that are allowed or prohibited for threatened compared to endangered species. Rules, called *4(d) rules*, apply only to threatened species and get their name from Section 4(d) of the ESA. These 4(d) rules provide the Service flexibility to allow some activities having a minor effect on a threatened species to continue while focusing attention on the threats that have a stronger influence on species' recovery. For example, when the Lesser Prairie-Chicken was listed as threatened, 4(d) rules allowed activities such as brush management, grazing, construction and maintenance of fences and livestock structures, use of existing water facilities, crop production, and other activities.

What are Habitat Conservation Plans?

Private individuals, corporations, tribes, states, and local municipalities which have endangered or threatened species on their

lands are prohibited from taking that listed species or harming its habitat. However, landowners may develop a *Habitat Conservation Plan* (HCP) to gain an incidental take permit, which allows certain projects or activities to continue. An HCP spells out required practices that minimize impacts to the listed species or that compensate for impacts that cannot be eliminated or minimized. The idea is to provide landowners with stability and certainty so they can make long-term investments necessary to manage lands for profit while protecting the listed species. The challenge is that developing an HCP can be complex and may take several months or years to finalize, depending on the proposed land use actions and how they affect the target species.



Photo credit: Diane Evans-Mack, IDFG

Habitat for small, isolated populations of northern Idaho ground squirrel includes sagebrush grasslands adjacent to coniferous forests in west-central Idaho.

What are Safe Harbor Agreements?

Many landowners voluntarily create habitat that could benefit threatened or endangered species. However, property owners might hesitate to engage in conservation efforts for fear of attracting to their lands endangered species which might subsequently subject them to ESA restrictions. To minimize this disincentive, the ESA was revised to create assurances for landowners that they will not be subject to additional restrictions or conservation commitments if they engage in activities that benefit a listed species. Landowners can sign a *Safe Harbor Agreement* allowing a specified level of take with further assurance that habitat conservation practices can be discontinued if they become untenable. Safe Harbor agreements are similar to a CCAA in that they encourage landowners to improve habitat and encourage recovery of a species without fear that future regulatory restrictions will be imposed. However, Safe Harbor Agreements are designed for species already listed as threatened or endangered whereas CCAAs are created for candidate species.

Summary

The political, scientific, and legal aspects of the ESA make it impossible to predict all that will occur before, during, or after a species is listed. Each step in the listing process is open for citizen lawsuits, which can result in changes and refinements to policies. Negotiating the policies and practices associated with the ESA can be time consuming, costly, and mentally taxing. But there are many opportunities to promote species recovery while also continuing economic activities like ranching and farming. Before a potential listing, CCAAs and WLFW programs are important tools to consider. After a listing, individuals can engage in required public comment periods, HCPs, and Safe Harbor Agreements. Ranchers grazing livestock on public lands may also need to consult the Service about their grazing plans if a species that inhabits their grazing allotments is listed as endangered or threatened. It is important to remember that not all activities are detrimental to species recovery. There are situations where grazing and other land management activities are beneficial for species recovery. But this process can be tricky. Land managers will need to be informed and innovative to simultaneously provide for endangered species and accomplish management goals.

For More Information:

- Comprehensive collection of information about the Endangered Species Act and species listed or petitioned for listing by the *U.S. Fish & Wildlife Service*: www.fws.gov/endangered/
- Endangered Species in Idaho by the *Idaho U.S. Fish & Wildlife Service Office*: www.fws.gov/idaho/
- Working Lands for Wildlife by the *Natural Resources Conservation Service*: www.nrcs.usda.gov/wps/portal/nrcs/detail/national/programs/initiatives/?cid=stelprdb1046975
- Information about Idaho species of concern and plans by the *Idaho Governor's Office of Species Conservation*: <http://species.idaho.gov>

This fact sheet is intended as general guidance but is not legal advice. Readers should consult their own legal counsel or other advisors for specific issues or questions related to the ESA.

Created by a team led by Dr. Gifford Gillette for the UI Rangeland Center in collaboration with the Idaho Governor's Office of Species Conservation.

The Rangeland Center is bridging the gap between science and land management by engaging stakeholders to develop solution-based research that has valuable and real-world implications for Idaho rangelands. More at www.uidaho.edu/range.

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