



National Environmental Policy Act, Endangered Species Act, and Habitat Conservation Plans



Photo: Aaron Barna, USFWS

US Fish and Wildlife Service
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National Environmental Policy Act (NEPA)

- These scoping meetings are the start of the NEPA and SEPA process for conducting the joint environmental review process



National Environmental Policy Act (NEPA)

- The NEPA process is intended to help public officials make decisions that are based on understanding the environmental consequences.....
- And also take actions that protect , restore and enhance the environment.



National Environmental Policy Act (NEPA)

Primary goals of NEPA:

- To inform and involve the public and use public input in decision-making
- To consider alternatives to a proposed action and effects that may occur



National Environmental Policy Act (NEPA)

- NEPA is required for proposed federal actions
- A USFWS decision to approve an Habitat Conservation Plan and issue an Incidental Take Permit is a federal action that triggers NEPA review



National Environmental Policy Act (NEPA)

NEPA considers the impacts of a federal action on the human environment, for example:

- water quality
- wetlands
- air quality
- cultural resources
- non-listed species

as well as ESA- listed fish and wildlife.

- **ESA** considers the impact of actions on listed fish and wildlife.



Scoping for an Environmental Impact Statement

- A 'Notice of Intent' in the Federal Register starts the formal scoping process for the EIS
- The scoping process helps to identify significant environmental issues for further analysis
- We request comments on:
 - Significant issues
 - Alternatives to address the proposal's need, purpose and objectives
 - Measures to avoid, mitigate, or minimize effects
 - Baseline environmental information
 - Other relevant information



Endangered Species Act (ESA)

Purpose

- To protect and recover imperiled species and the ecosystems upon which they depend





Endangered Species Act (ESA)

Species may be listed as endangered or threatened:

- **'Endangered'** means a species is in danger of extinction throughout all or a significant portion of its range
- **'Threatened'** means a species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range



Photo: Tom Hamer



Endangered Species Act (ESA)

ESA protects endangered and threatened species and their habitats by prohibiting the “take” of listed animals

- **Take** means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct”



Endangered Species Act (ESA)

- **Harass** is defined as “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly impair normal behavioral patterns including breeding, feeding or sheltering.”
- **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.”



Endangered Species Act (ESA)

- **Section 9 of the ESA** states it is unlawful to take endangered species or threatened species pursuant to regulation

However....

- **Section 10 of the ESA** allows take of threatened and endangered species, provided it is incidental to an otherwise legal activity, if they have a habitat conservation plan (HCP) including an incidental take permit



Endangered Species Act (ESA)

- **Incidental Take** refers to take of threatened or endangered species that results from, but is not the purpose of, carrying out an otherwise lawful activity



Habitat Conservation Plans

A **Habitat Conservation Plan (HCP)** is a voluntary tool for non-Federal landowners to receive an incidental take permit:

- The WDNR already has an HCP, however, they will be amending their existing HCP



Habitat Conservation Plans

An HCP must describe:

- Impacts likely to result from taking of the species
- Measures the applicant will take to monitor, minimize, and mitigate impacts
- Funding to perform the measures
- Alternative actions that would not result in take and reasons those alternatives are not being taken
- Additional measures the FWS may require as necessary or appropriate for the HCP



Habitat Conservation Plans

USFWS will approve an HCP (or in this case amend an existing HCP) and issue an incidental take permit, provided that:

- Taking is incidental
- Applicant will to the maximum extent practicable, minimize and mitigate the impacts of the taking
- Applicant ensures funding for the plan
- The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild
- Measures, if any, required by USFWS will be met



Next Steps

- Two phases of scoping
- Draft EIS
- Final EIS
- USFWS completes Biological Opinion, Findings and Record of Decision
 - States what the decision was
 - Discusses factors used in decision
 - Incorporates the ESA analysis and decision