



Relationships to Other Laws

ESA Implementation: Relationships to Other Laws



Red-cockaded Woodpecker



Cyanea superba



Gopher Tortoise
Photo Courtesy of USFWS



Relationships to Other Laws

Objectives

- Understand the compliance relationship between ESA and MMPA.
- Recognize key differences between the information and requirements of each statute



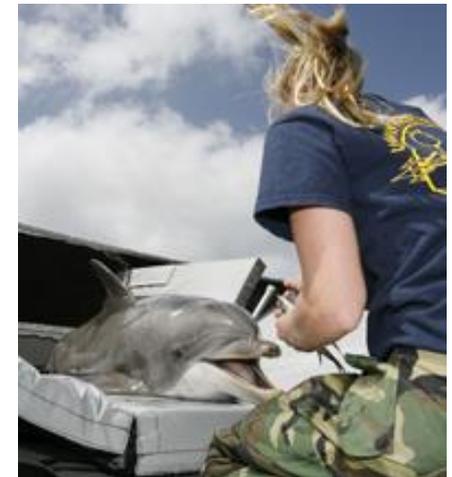


Relationships to Other Laws

Federal Mandates

- **ESA:** conserve T&E Species and consult to ensure that a Federal action is not likely to jeopardize the continued existence of a listed species
- **MMPA:** moratorium on the taking of all marine mammals except by permit

Both mandates prohibit taking or harassment, but the procedures are different





Relationships to Other Laws

Brief ESA Overview

- **ESA:** (as pertaining to incidental take of animals)
 - Illegal to “Take”:
 - Take = Harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to do so
 - Harass = Annoying wildlife so as to significantly disrupt normal behavioral patterns (breeding, feeding, sheltering)
 - ESA Section 7 Consultation required when proposed action “may effect”
 - Action agency describes effects at individual level
 - USFWS/NMFS determines if effects rise to the level of take and describes population level impacts.
 - There is no public review process and a NEPA analysis of a draft BO is not required.



Relationships to Other Laws

Brief MMPA Overview

- **MMPA:** (as pertaining to unintentional takes)
 - “Moratorium” on taking of all marine mammals without authorization:
 - Take = kill or harass a marine mammal in the wild
 - Harassment = potential to injure or disturb by disrupting behavior
(refer to regulations for exact definition)
 - Authorization:
 - “Letter of Authorization” (LOA) from NMFS for harassment or mortality
 - “Incidental Harassment Authorization” (IHA)
 - Agency determines amount of take and population impacts
 - MMPA permitting process requires a NEPA analysis and opportunity for public review.



Relationships to Other Laws

Relationship between ESA and MMPA

- When there's a conflict between MMPA and ESA, the more restrictive MMPA provision applies (ESA § 17):
 - An ESA incidental take statement cannot be issued before such take is authorized by a MMPA letter of authorization



Relationships to Other Laws



Questions?

