

Section 7



ESA Implementation: Section 7



Red-cockaded Woodpecker



Cyanea superba



Gopher Tortoise
Photo Courtesy of USFWS



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Objectives

- Understand the intent of Congress and the difference between sections 7(a)(1) and 7(a)(2)
- Become familiar with and understand the language and intent of sections 7(b), 7(c), 7(d), 7(e), 7(f), 7 (g), and 7(j)
- Know how to be proactive





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Section 7(a)(1)

- Requires Federal agencies to develop conservation programs for threatened and endangered (T&E) species
- Applies to ALL FEDERAL AGENCIES!!!
- How these programs are to be implemented is not prescribed by law or regulation.



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Section 7(a)(2)

- Measures effects against conservation
- Requires Federal agencies to consult with the U.S. Fish & Wildlife Service (USFWS) / National Marine Fisheries Service (NMFS) to ensure actions are not likely to jeopardize the continued existence of T&E species
- Requires specific actions to limit the amount or extent of incidental take that may result from an activity within the action area, and for which formal consultation was conducted



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Sections

- Section 7(a)(3) - requires Federal agencies to consult with the Services in cooperation with or on behalf of a license or permit applicant
- Section 7(a)(4) - requires Federal agencies to consult with the Services to ensure that they are not undertaking, funding, permitting, or authorizing actions likely to *jeopardize* the continued existence of **species proposed for listing** or *destroy or adversely modify* **proposed critical habitat (CH)**



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Sections Cont'd...

- 7(b) - establishes the process for interagency consultation pursuant to section 7(a)(2), section 7(a)(3), and section 101(a)(5) of the MMPA
- 7(c) - requires Federal agencies to conduct a Biological Assessment (BA) of proposed major construction actions within 180 days of being notified by USFWS or NMFS that listed species may be present in the action area
- 7(d) - prohibits Federal agencies from making irreversible or irretrievable commitments of resources that would foreclose options to develop reasonable and prudent alternative measures that would prevent placing listed species in jeopardy of continued existence (*i.e.*, violation of section 7(a)(2))

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Sections Cont'd... ESA “Exemption Process”

- 7(e) - provides the Endangered Species Committee with the authority to exempt a Federal agency from the section 7(a)(2) requirement to ensure that any action carried out, permitted or funded, does not jeopardize the continued existence of species
- 7(f) - establishes requirements for implementing regulations for section 7(a)(2) exemption requests
- 7(g) - outlines the application requirements and procedures for requesting section 7(a)(2) exemptions



Leatherback Turtle
Photo: Scott R. Benson, NMFS Southwest
Fisheries Science Center



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Keeping Track of Developing ESA Actions

- Activities pursuant to section 4 – species listings and CH designations





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Early Coordination – Be Proactive

Desired outcomes:

- Exclusion from proposed CH designations based on benefits from INRMPs
- ESA listings found unwarranted based on Navy's conservation management
- Final Recovery Plans:
 - Do not erroneously identify Navy activities as threats
 - Do not contain criteria that would result in unnecessary restrictions to the Navy mission
 - Do provide opportunities for partnering
- Recovery of T&E Species are:
 - Compatible with Navy's mission
 - Successful



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SECNAV Policy 25 NOV 02

- Identifies active participation in ESA listing decisions, CH designations, and recovery planning as essential to prevent or minimize restrictions to the Navy by providing timely comments on ESA rule-making
- Requires Deputy Chief of Naval Operations (N4) to review and provide approval for comments regarding proposed CH designations and proposals to introduce T&E species on Navy property





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Action Offices

- Status Review Notices published in the FR (90-day petition findings):
 - Echelon II, III, and IV Commands - restricted range of species, low controversy
 - OPNAV N45 – broad distribution of species (e.g., 82 Corals)
- Development of proposals for CH designations:
 - Echelon II, III, and IV Commands – restricted range of species, low controversy
 - OPNAV N45 – broad geographic range of species or high controversy (e.g., NARW)
- Draft Recovery Plans
 - Echelon II, III, and IV Commands unless otherwise directed (e.g., Kemps Ridley Sea Turtle)

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Action Offices Cont...

- CH proposals published in the FR
 - OPNAV N45
- ESA proposed listings published in the FR
 - OPNAV N45 (e.g., Flat-tailed Horned Lizard)
- Introduction of T&E Species to Navy properties
 - OPNAV N45 (e.g. Southern Sea Otter)





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Early Coordination Cont...

- Echelon III or IV Commands engage local USFWS and NMFS staff as ESA actions are developed
- A general tasker will not come from CNO N45:
 - All responses and discussions (verbal or written) to or with RA counterparts must be coordinated with all major stakeholders that are likely to be affected by the developing ESA action
 - Contact OPNAV N45 if early coordination is likely to fail to achieve desired outcomes
- OPNAV N45 gathers information from Echelon II Commands and engages appropriate Regulatory Agency office
 - An official general tasker will come from CNO N45

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Process – N4 Responses

- A general tasker will originate from OPNAV N45 Echelon II Commands requesting detailed information related to the proposed ESA action:
 - Descriptions of installation and its mission
 - Descriptions of INRMP benefits to species
 - Descriptions of Navy mission in area
 - Descriptions of potential impacts to the Navy mission
- Information will be due 3-4 weeks before the comment deadline published in the FR Notice
- A copy of the final response will be sent back to the coordinating offices

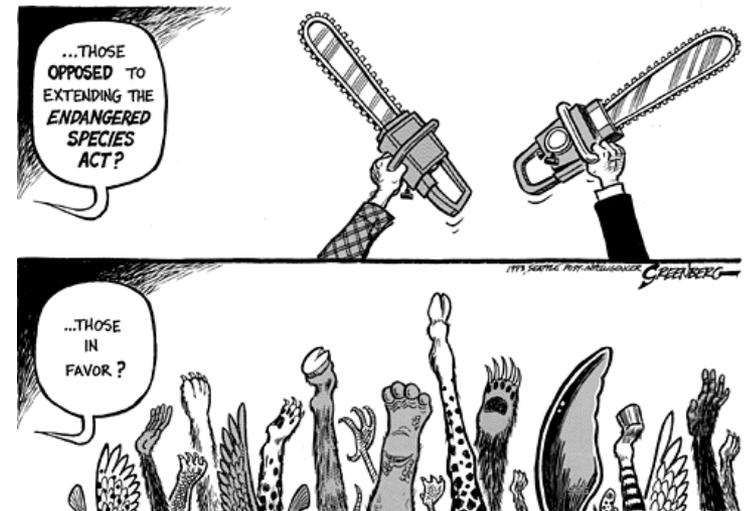




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Lessons Learned

- More is better, details are important
 - Sufficient information must be provided for the Regulatory Agencies (RAs) to make appropriate determinations
- Descriptions of DoD installations and activities must be in plain language (*i.e.*, written for the general public, not a DoD audience)





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Lessons Learned Cont'd...

- Prepare comments to illustrate impacts of the ESA actions to the DoD mission, not just potential impacts of DoD activities on the ESA action
- Create descriptions of national security impacts that are as specific as possible, not vague or too general
- Must ensure that INRMPs adequately address the species as outlined in the INRMP Guidebook

