

STATUS REPORT ON KIRTLAND'S WARBLER PLANNING

ENDANGERED SPECIES ACT OF 1973 (PL. 93-205)

Amended in 1978.

C. Critical Habitat = those areas essential to the conservation of the species & which require special management consideration or protection.

In brief summary, the basic provisions of the Act are as follows:

- (1) Provides for two categories of species listing - endangered and threatened.
 - a. endangered species - any species which is in danger of extinction throughout all or a significant portion of it's range.
 - b. threatened species - any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of it's range.
- (2) Provides for acquisition of critical habitat through Land and Water Conservation Funds. *ESAA = SoFA for NF's*
- (3) Provides for State cooperation and participation in the endangered species program through cooperative agreements, grants-in-aid funding, and other incentives. - *ESAA = plants*
- * (4) Calls for participation where appropriate by all federal agencies and directs that no federal funds can be utilized for an activity that would be detrimental to an endangered species.

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Most of the Forest Service responsibilities fall under Section 7 of the Act, dealing with interagency cooperation. The major Forest Service obligations under Section 7 follow:

- (1) Utilize our authority to carry out conservation programs for listed species.
- (2) Insure that our activities or programs do not jeopardize the continued existence of a listed species.
- (3) Insure that our activities or programs do not result in the destruction or adverse modification of critical habitat.
- (4) Insure that emphasis on habitat protection for endangered and threatened species be considered number one priority.

Consultation

Under Section 7 of the Act, the Forest Service must go into consultation with the USFWS if we identify an activity or program that will affect (positively or negatively) the listed species or it's habitat. The Forest Service is responsible for conducting a competent review of each program or activity which it funds, aughorizes, or carries out for determining whether it may affect a listed species. If in doubt on the issue of "may affect", we are to initiate consultation! This request should be issued to the Regional Director of the USFWS region involved. Authority to request consultation is retained by the Regional Forester but may be delegated to the Forest Supervisor.

The Regional Director of the USFWS can also call for consultation if he identifies any activity or program of a federal agency that has not received prior consultation and that may affect listed species or their habitat.

Informal consultation can also be utilized at the field level between the USFWS and USFS personnel but is supplemental to, not a substitute for, the formal consultation process.

Upon completion of formal consultation, a biological opinion will be issued by the Director of USFWS. This opinion represents the Government's position on the action relevant to enforcement of the Endangered Species Act. If the biological opinion concludes that the activity or program consulted upon is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat, four alternative courses of action are possible by the Forest Service (or any other federal agency).

- (1) Halt the action;
- (2) Defer the action pending some anticipated change in the situation or the status of the species which might permit continuing with the activity or program;
- (3) Modify the action as recommended or as otherwise compatible with conservation of the species; or
- (4) Proceed in spite of the adverse opinion. This alternative is not recommended. Proceeding contrary to the biological opinion incurs the strong probability of a lawsuit. Only the Chief, Regional Foresters, Station Directors, and Area Directors may approve a decision to override an unfavorable biological opinion (and then only under very specific conditions)

 This may not be an option but ESAA-1978 does provide an exemption process. Agency may apply for exemption within 90 days of completion of consult. process.

Review board:
 Secy - Pres. - Ad. Law Judge.
 1. Consultation integrity
 2. Prepare a report to ES Comm.
 ES Council
 Sec of Ag, Army, & Nat. Ad.
 10 A.A. & Pres. Appointed
 1. No reasonable alternative or prudent alternative clearly outweighs benefits which are consistent with
 3. Regional or Nat. Sec. -
 B. Mitigation.

