
ENDANGERED SPECIES ACT

The passage of the Endangered Species Act in 1973 set the stage for profound changes in the operation of dams and reservoirs in the Columbia River Basin. In 1991, the National Marine Fisheries Service listed the Snake River sockeye for protection under the ESA. Over the next 14 years, a dozen more species of salmon and steelhead joined the list, and the U.S. Fish and Wildlife Service added white sturgeon and bull trout. ESA-mandated species protection and recovery has since overtaken traditional river uses, like power production, as a driving force in how the Columbia River system is managed.



The Origins and Mechanics of the ESA

The ESA has been called one of the most far-reaching fish and wildlife conservation laws in the world. Congress enacted the law more than 30 years ago to address concerns about the pace with which fish, wildlife and plant species were going extinct. The Act was designed to protect endangered species and the ecosystems on which they depend, and it requires actions aimed at recovery.

Two federal agencies share responsibility for implementing the ESA.

- The Secretary of Commerce, acting through the NOAA Fisheries (NOAA), has the authority to designate the status of marine (anadromous) fish and certain marine mammals and to oversee their recovery.
- The Secretary of Interior, acting through the U.S. Department of Fish and Wildlife (USFWS), has similar authority with respect to non-anadromous fish and all other wildlife.
- Either agency may initiate a species status review. Any U.S. citizen or organization may also file a petition requesting a species be listed under the ESA.

NOAA and USFWS each have a formal legal procedure for considering whether to list a species. The procedure, a federal rulemaking that takes about two years, has various milestones and deadlines the agency must meet. Under the ESA, a decision to list or not list a species has to be based solely on biological factors. Economic, social or other considerations do not play a role.

Once a species is given ESA protection, the listing agency must also designate areas as critical habitat. Critical habitat is area deemed to be essential to the survival of the species, and it may require special protections. Economic and social factors can be considered in designation of critical habitat.

Species listed for protection under the ESA are designated as threatened or endangered.

- A species categorized as “endangered” is in danger of extinction throughout all or a significant portion of its range.
- A “threatened” species is one that is likely to become endangered in the foreseeable future.

Recovery plans are required for both categories of listings. Two ESA-listed anadromous species in the Columbia River Basin – Upper Columbia River spring chinook and Snake River sockeye – are designated as endangered; the other eleven are listed as threatened. NOAA is currently working on recovery plans for many of these listed species.

ESA Offers Powerful Protection

The ESA offers a broad range of protections for listed species. The law prohibits a federal agency from authorizing, funding or carrying out any action that may jeopardize a listed species or harm its critical habitat. Actions carried out by private citizens or organizations also come under the reach of the ESA, if they require a federal permit. For example, non-federal entities operating dams licensed by the Federal Energy Regulatory Commission meet the mandates of the ESA.

Threatened and endangered species are also protected from “take.” This means that individuals or organizations can not harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to do any of these things to a listed species. The listing agency can allow “incidental take” under some circumstances. Violations of the ESA can result in serious criminal and civil penalties.

The ESA requires consultation when a federal agency action may affect a threatened or endangered species or its habitat. For example:

- Operators of the Federal Columbia River Power System (FCRPS) – the Corps of Engineers, Bureau of Reclamation and Bonneville Power Administration – must consult with NOAA and USFWS on the potential for harm to listed salmon, steelhead and other species.
- These consultations result in Biological Opinions - mitigation plans - issued by NOAA and the USFWS that spell out hydro operations and actions to remedy harm to listed species.

Investing in Results

Four BiOps on federal hydro system operations have been developed this decade. Each one has been litigated by environmental groups, tribes and others. The costs of complying with the ESA and other fish and wildlife laws and regulation have been enormous in the Columbia River Basin.



Northwest families and businesses pay these costs through their electric bills. About \$14 billion has been spent since the late 1970’s on fish and wildlife protection - including actions to comply with the ESA – making the Columbia River Basin restoration program the largest in the USA and likely the world.

Actions taken this decade at the eight federal dams on the Columbia and Snake Rivers include installing new fish “slides” or other technologies to make the salmon’s trip downstream to the ocean faster and safer. The 2008/2010 Biological Opinion or federal salmon plan included a massive habitat restoration effort with \$100 million each year going to northwest states and tribes to improve habitat, among other actions, and the 2014 Biological Opinion includes continued habitat restoration actions. Hatchery reforms and improvements also are being implemented. (See: www.salmonrecovery.gov for more information on mitigation measures and implementation of the 2008/2010 and 2014 Biological Opinions).

Less electricity is also generated as a result of augmenting river flows and spilling water through the federal dams to help young salmon migrating downstream. Barges travel the Columbia-Snake Inland Waterway less than fully loaded, a consequence of ESA-related challenges to dredging. Farmers forego irrigation water to keep flows in-stream to benefit listed species. Ironically, some of these sacrifices are offset by the ravages of predators, such as California sea lions and Caspian terns, that are also protected under federal or international laws.

Northwest RiverPartners supports the broad goals of the ESA and wise use of customer dollars to protect and mitigate the impacts of hydro system operations on listed salmon.

Northwest RiverPartners is an alliance of farmers, utilities, ports and businesses that promote the economic and environmental benefits of the Columbia and Snake Rivers and salmon recovery policies based on sound science.

www.nwriverpartners.org

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