

ENDANGERED SPECIES ACT (ESA)

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 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 for survival, and it requires actions aimed at recovery.

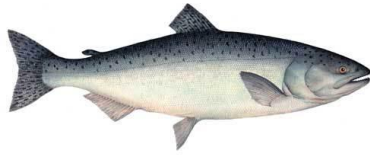
Two federal agencies share responsibility for implementing the ESA.

- The Secretary of Commerce, acting through the National Marine Fisheries Service (NMFS), has authority to designate the status of marine (anadromous) fish and certain marine mammals and to oversee recovery.
- The Secretary of Interior, acting through the U.S. Department of Fish and Wildlife (USFWS), has similar authority with respect to 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.

NMFS 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 in an initial listing decision.

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.



Chinook Salmon
Oncorhynchus tshawytscha

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 others are listed as threatened. NMFS is currently working on recovery plans for the listed species.



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. Considerations other than biology can be brought to bear in the designation of critical habitat.

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. This prohibition extends the ESA’s reach to actions carried out by private citizens or organizations if they require a federal permit. It ensures, for example, that 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. The listing agency can allow “incidental take” under some circumstances. Intentional violations of the ESA can result in serious criminal and civil penalties.

COLUMBIA RIVER BASIN ANADROMOUS FISH LISTED FOR ESA PROTECTION

<u>Species</u>	<u>Year Listed</u>	<u>Status</u>
Lower Columbia Chinook	1999	Threatened
Upper Columbia Spring Chinook	1999	Endangered
Snake River Fall Chinook	1992	Threatened
Snake River Spring/Summer Chinook	1992	Threatened
Upper Willamette River Chinook	1999	Threatened
Columbia River Chum	1999	Threatened
Lower Columbia River Chum	2005	Threatened
Snake River Sockeye	1991	Endangered
Snake River Steelhead	1997	Threatened
Upper Columbia Steelhead	1997	Threatened
Middle Columbia Steelhead	1999	Threatened
Lower Columbia Steelhead	1998	Threatened
Upper Willamette Steelhead	1999	Threatened

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

- In order to meet ESA requirements, the operators of the Federal Columbia River Power System (FCRPS) – the Corps of Engineers, Bureau of Reclamation and Bonneville Power Administration – must consult with NMFS and USFWS on the potential for harm to listed salmon, steelhead and other species.
- These consultations result in Biological Opinions issued by NMFS and the USFWS that spell out FCRPS operations and actions to remedy any potential harm to listed species.

Every Biological Opinion NMFS has issued on FCRPS operations has been the subject of a legal challenge by environmental groups, tribes and/or others. NMFS’ 2000 Biological Opinion was overhauled at the direction of a federal judge, re-released in 2004; that version was also tied up in

protracted litigation. The current FCRPS Biological Opinion completed in May 2008, and amended in 2009, still lingers in the courtroom.

Investing in Results

The costs of complying with the ESA are enormous in the Columbia River Basin. Less electricity is generated as a result of augmenting flows and spilling water for fish passage. 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.

We are united in an effort to assure that money spent to carry out the ESA is invested wisely and effectively. Our goal is to speed recovery and shrink the list of species listed as threatened and endangered.

Northwest RiverPartners is a partnership of farmers, electric utilities, ports, and large and small businesses in the Pacific Northwest. We are dedicated to ensuring the Columbia and Snake remain living, working rivers to benefit families and businesses in the region.

www.nwriverpartners.org

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