

Changes to the Wildlife Rules and Their Effects on the Oil and Gas Industry

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This Morning's Focus



- **Migratory Bird Treaty Act**
- **Bald and Golden Eagle Protection Act**
- **Endangered Species Act**
- **Questions**

The Migratory Bird Treaty Act



- Commitment to four international conventions with Canada, Japan, Mexico and Russia.
- Protects all migratory birds
 - Exceptions include non-native birds such as house sparrows and European starlings
- Illegal for anyone to take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any migratory bird, or the parts, nests, or eggs of such a bird except under the terms of a valid permit issued pursuant to federal regulations
- Incidental take permits
- Recent interpretation by President – only intentional take covered

The Bald and Golden Eagle Protection Act



- Provides long-term species management and protection in addition to the ESA and MBTA
- prohibiting the take, possession, sale, purchase, barter, offer to sell, purchase or barter, transport, export or import, of any bald or golden eagle, alive or dead, including any part, nest, or egg, unless allowed by permit
- maximum fine of \$5,000 or one year imprisonment with \$10,000 or not more than two years in prison for a second conviction. Felony convictions carry a maximum fine of \$250,000 or two years of imprisonment.

Endangered Species Act (ESA)



- **Section 4 of the ESA**
 - Involves the addition or removal of species from the federal lists of threatened and endangered species
 - Provides procedures for designating critical habitat
 - Addresses protective regulations for threatened species (i.e., 4(d) rules)
 - 50 CFR 424
- **Section 7 of the ESA**
 - Involves procedures for coordination with other federal agencies
 - 50 CFR 402
- **Section 9 of the ESA**
 - Establishes prohibitions for listed species
 - 50 CFR 17

Listing, Delisting, or Reclassifying Species



- Created a regulatory framework for the phrase “foreseeable future”
- Clarified that the standard for listing and delisting of species is the same
- Removed reference to economic or other impacts in classification decisions



Foreseeable Future

- **Extends only so far as can reasonably determine that threats and the species' responses to those threats are likely.**
- **Described on a case-by-case basis, using the best available data for each species**
- **No specific timeframes are necessary, qualitative descriptions are ok**



Delisting

- Clarifies it is appropriate to delist a species when:
 - It is extinct
 - It does not meet definition of an endangered or threatened species
 - Listed entity does not meet the definition of a species



Economic Factors

- **Make listing determinations solely on the basis of the best available scientific and commercial information available**
 - Left it open that economic information can be presented to the public

Criteria for Designating Critical Habitat



- Clarified when designation of critical habitat may not be prudent
- Revised the process and standards for designation of unoccupied critical habitat
- Revised the definition of physical or biological features



Critical habitat – not prudent

- **Critical habitat may be not prudent when:**
 - Designating habitat may imperil the species;
 - Habitat impacts not a threat or threats to habitat stem solely from causes not able to be addressed by section 7(a)(2) of the Act;
 - Sea level rise, glaciers melting, etc.
 - Areas within U.S. jurisdiction provide no more than negligible conservation value for species occurring primarily outside U.S. jurisdiction;
 - No areas meet definition; or
 - The Secretary otherwise determines critical habitat is not prudent

Critical habitat - unoccupied



- **An area not currently occupied by a listed species cannot be designated critical habitat unless the area occupied by the species is inadequate to ensure the species' survival**

Physical or biological features



- **Added the phrase “essential to the conservation of the species.”**
- **Added features essential to support the life-history needs of the species**



Consultation changes

- **Streamline the process**
- **Define “programmatic consultation”**
 - Based on established procedures working with other federal agencies
- **Added expedited consultation**
 - Mutual agreement between federal agencies to enter into this process
 - The action federal agency provides all necessary information to begin initiation
- **Implementation on consultation changes delayed until 28 October 2019**



Threatened species

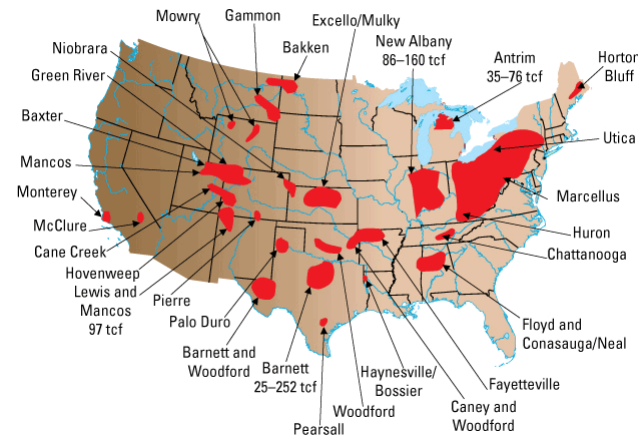
- **Rescinds current regulations that automatically apply prohibitions for endangered species to threatened species**
- **Protections for species listed as threatened in the future will be made on a case-by-case basis tailored to what is necessary and advisable for that species (i.e., via a species-specific 4(d) rule)**
- **No change in protections for species currently listed as threatened species**

Regional Issues

- › **State and Local Regulations**
- › **State-level threatened and endangered species regulation**
 - States often provide varying degrees of species regulation and/or have few resources for regulatory enforcement
- › **Many state-listed species may also be federally listed or federal candidate species**
 - Candidate species may get special consideration when working on federal lands

Regional Issues (cont.)

- › The Eagle Ford Shale – Texas tortoise, Texas horned lizard, spot-tailed earless lizard
- › The Permian Basin – Dunes sagebrush lizard, migratory birds, public property in the western Permian, lesser prairie-chicken
- › The Bakken Shale – Piping plovers, migratory birds, wintering elk, public lands, grassland birds
- › The Haynesville Shale – Red-cockaded woodpecker, Louisiana black bear, Louisiana pine snake
- › Oklahoma – American burying beetle, public lands, lesser prairie chicken, Arkansas River shiner
- › The Marcellus Shale – Mussels, bats



Recent Species Changes

- › **Grizzly bear – per court order, all grizzly bears in lower 48 are again listed as threatened (31 July 2019)**
- › **Greater sage-grouse**
 - Bi-state distinct population
 - 6-month extension of comment period to list the species as threatened (1 October 2019)
- › **American burying beetle**
 - Reopen comment period for 30 days (9 September 2019)
 - Propose to reclassify species as threatened
- › **Golden orb and Smooth pimpleback**
 - 12-month finding that listing is not warranted
 - Not distinct species

Recent Species Changes

- › **Gray wolf**
 - Proposed rule to delist species
- › **Tobusch fishhook cactus**
 - Reclassified from endangered to threatened
 - 15 May 2019
- › **Black-capped vireo**
 - Removed from the federal list of endangered and threatened wildlife
 - Considered recovered
- › **Louisiana pinesnake**
 - Listed as threatened (6 April 2018)
- › **Texas hornshell**
 - Listed as endangered (9 February 2019)
 - Black River (NM), Pecos River (TX), Devils River (TX), Rio Grande River (TX)

Dunes Sagebrush Lizard

- › **Permian Basin = 39.6 million acres**
 - Dunes sagebrush lizard occupies less than 2% of the basin
- › **Candidate Conservation Agreements**
 - 2012 Texas Conservation Plan
 - Implement construction BMPs
 - Trench length/duration
 - Limit vegetation removal
 - Temporal construction limits
 - HDD
- › **Proposal for listing was withdrawn by USFWS in 2012**
- › **Frac sand operations have heated up the issue**
- › **Lawsuit filed by Center for Biological Diversity and Defenders of Wildlife 1 October 2019**

Questions?

