



ESA Recovery Credit Systems & Oil & Gas Development on BLM Lands

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Intro & Agenda

- 1. Overview of ESA & Impacts on Oil and Gas Development**
- 2. Recent Conservation Innovations**
- 3. Recovery Credit Systems for Oil & Gas Development on BLM Lands: Potential Benefits & Challenges**

Key Sections of the ESA

Section 3 - Definitions

Section 4 - Listing of species

Section 7 - Federal Agency Actions and Consultations

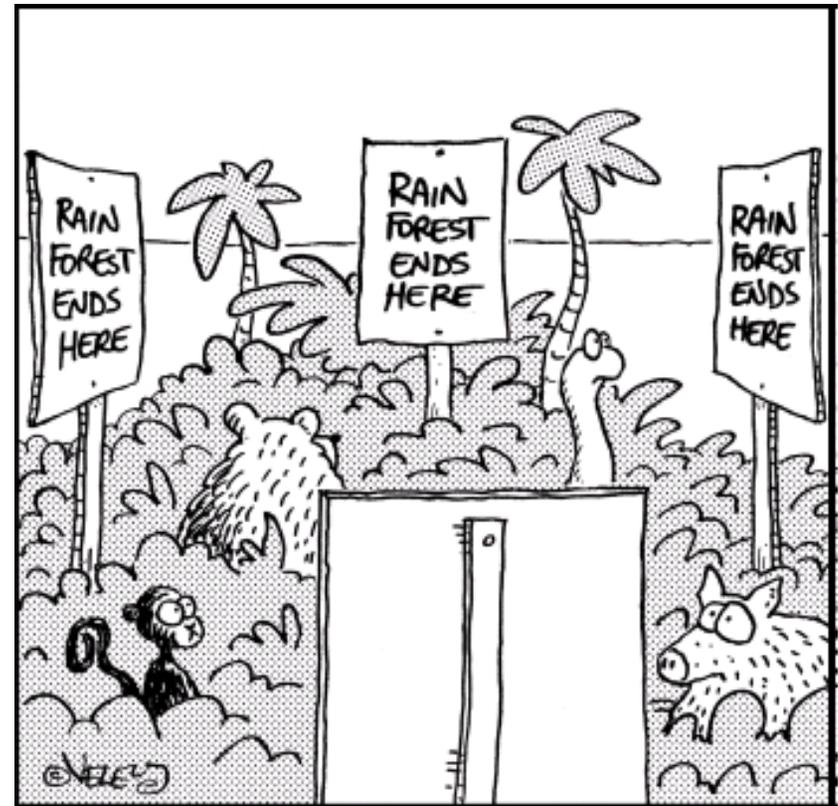
Section 9 - Prohibition on unauthorized take

Section 10 - Permits

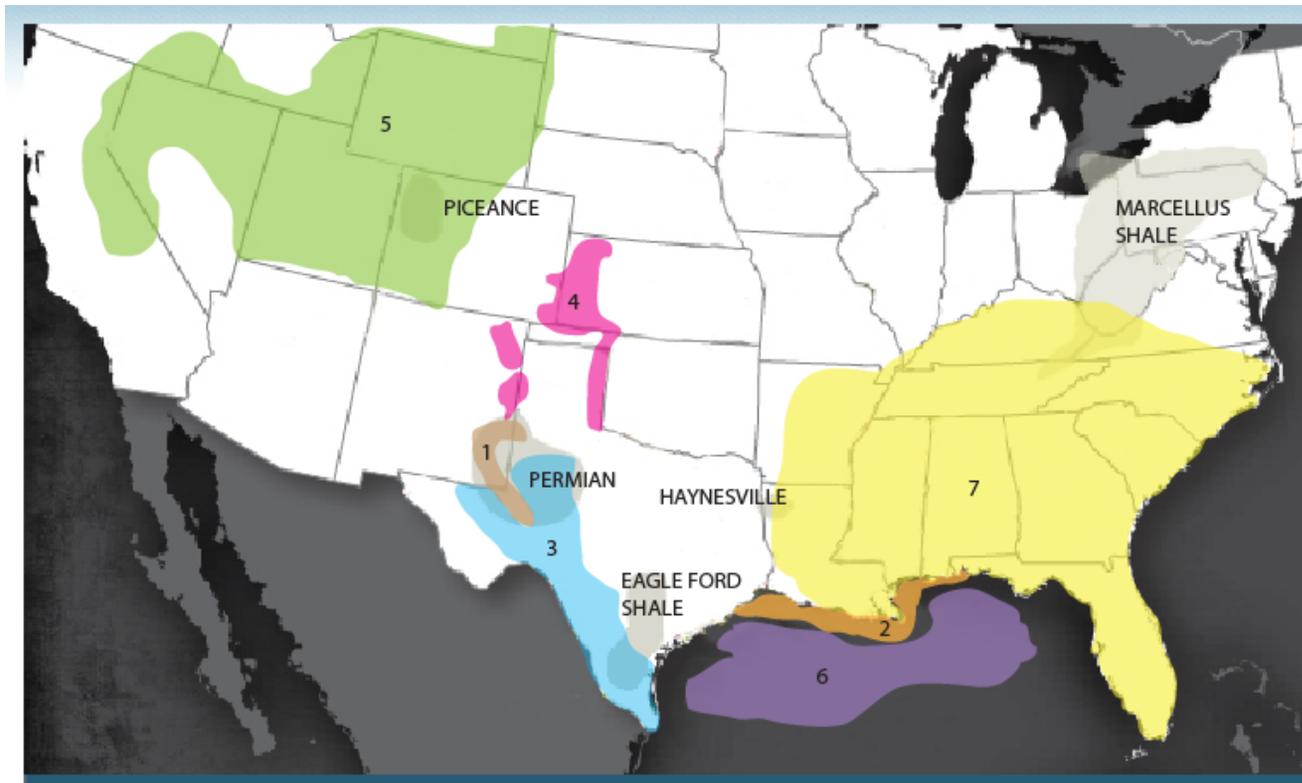
Section 11 - Civil and criminal penalties and enforcement

Definition of Take under the ESA

- "Take is defined as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct."
- "Harm" is defined as "an act which actually kills or injures wildlife."
- Harm may include "significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering."



ESA Species Actions to Watch 2012-2016



- | | |
|------------------------------|--|
| 1 Dunes Sagebrush Lizard | 5 Greater Sage Grouse |
| 2 Salt Marsh Minnow | 6 Marine Mammals (Sperm Whale, Bottlenose Dolphin) |
| 3 Spot-tailed Earless Lizard | 7 "374 Southeast Species" |
| 4 Lesser Prairie Chicken | |

ESA Incidental Take Permits

- **Sec. 10 Candidate Conservation Agreement with Assurances (CCAA)**
 - Encourages pro-active conservation of species pre-listing as a means to preclude the need for listing
 - Focus is on conservation through avoidance and minimization of harms to species
 - Automatically converts to an “enhancement of survival” take permit if listing occurs
- **Sec. 10 Habitat Conservation Plan (HCP)**
 - Allows for incidental take in exchange for mitigation
 - Application process typically takes 2-3 years and typically costs \$1.5 million
- **Sec. 7 Permits**
 - Federal "hook" into consultation process

Focus on prevention of extinction vs. recovery of species

- “Orderly progression” under ESA from listing to recovery
- Recovery regulations and requirements not fully developed
- The Service takes position that recovery is not mandatory consideration in Section 10 permits
 - *Spirit of Sage Council v. Kempthorne* confirmed Service approach
- Inconsistent consideration of recovery under Section 7 consultations

Recovery Credit Systems (RCS)

- **Proposed via guidance in 2007 & 2008**
- **Designed for use by Army on Ft. Hood and to encourage off-site conservation**
 - Private landowners generate credits by activities focused on recovery of species
 - Temporary impacts, temporary conservation (*i.e.* 25 years vs. perpetuity)
- **Designed for federal agencies to obtain credit for recovery activities on private lands**
- **Broad stakeholder support**

Texas Conservation Plan for the Dunes Sagebrush Lizard

- **“Hybrid” programmatic incidental take permit combines CCAA and HCP**
- **Ability to enroll activities vs. lands**
 - Flexible conservation measures focused on recovery
 - Extended RCS concept to private actors
 - Preservation for mitigation not required, but optional
- **High enrollment resulted in withdrawal of proposed listing**
- **Model for future oil and gas CCAAs & HCPs**

BLM & Species Protection

- **Special Status Species Policy**
 - Overlap of Resource Management Plans & NEPA
- **Trend toward increased pre-ESA-listing protection of candidate species on BLM lands**
 - December 27, 2011 internal Instruction Memorandum on Greater Sage-Grouse
 - Dunes Sagebrush Lizard/Lesser prairie chicken resource management plans
- **Focus is on avoidance vs. BLM's mandate for "multiple use"**
- **Little, if any, focus on recovery**

RCS & BLM - Benefits

- **Biological**

- Greater focus on recovery pre-listing
- Conservation strategies that can adapt with climate change

- **Resource Development**

- Less focus on avoidance, more focus on “multi-use”
- More flexibility with conservation activities

- **Regulatory**

- Avoid some NEPA and RMP planning issues

RCS & BLM - Challenges

- **Regulatory**

- RCS regulatory guidance should not be an obstacle
- Can't avoid NEPA
- Still requires programmatic “two-tiered” review

- **Political**

- BLM rulemaking more focused on negatives of HF
- Budget issues (not clear that it would be more resource intensive than RMP process)
- Could be structured in way to gain support from environmental groups

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