

December 1994

ENDANGERED SPECIES ACT

Information on Species Protection on Nonfederal Lands





United States
General Accounting Office
Washington, D.C. 20548

**Resources, Community, and
Economic Development Division**

B-257924

December 20, 1994

The Honorable Gerry E. Studds
Chairman
The Honorable Jack Fields
Ranking Minority Member
Committee on Merchant Marine
and Fisheries
House of Representatives

The Honorable Jim Saxton
Ranking Minority Member
Subcommittee on Environment
and Natural Resources
Committee on Merchant Marine
and Fisheries
House of Representatives

The Congress is currently considering reauthorization of the Endangered Species Act (ESA). To assist in this effort, you asked that we obtain information on the efforts of the Department of the Interior's U.S. Fish and Wildlife Service (Service) to protect species under the ESA, particularly on nonfederal lands. Specifically, we (1) determined the extent to which species listed under the act have habitat on nonfederal lands, (2) obtained information on how two of the act's provisions have addressed potential conflicts between species protection and the use of nonfederal lands, and (3) determined the extent and nature of legal actions taken to protect species or as a result of the protection being provided to species.

This letter provides the results of our review. The statistical data included in this letter were primarily obtained from Service officials in response to a survey we conducted.

Results in Brief

A predominant number of the species protected under the Endangered Species Act have the major share of their habitat on nonfederal lands. Specifically, of the 781 listed species for which the Service was responsible as of May 1993, 712—over 90 percent—have habitat on nonfederal lands. Of these, according to the Service, 517 have over 60 percent of their total habitat on nonfederal lands.

Two processes authorized under the act—the consultation process under section 7 and the habitat conservation planning process under section 10—have addressed potential conflicts between the effort to protect species and land use activities on nonfederal lands. The implementation of these processes has resulted in nonfederal landowners’ altering their planned or ongoing activities in various ways to minimize and/or mitigate their potential impacts on protected species. For example, nonfederal landowners have been required to replace species habitat expected to be lost as a result of their activities.

The Service and others have initiated legal actions to protect species or as a result of the protection being provided to species. Specifically, the Service has enforced the act’s prohibition on the taking of protected species.¹ The Service’s data showed that for 126 takings violations adjudicated during fiscal years 1988 through 1993, criminal charges were brought in 86 instances, and civil charges were brought in 40 instances. In at least four instances, injunctive relief was obtained to stop or delay an activity on nonfederal lands that was viewed as posing a threat to a protected species. And court decisions in two instances denied individuals’ claims that species protection under the act resulted in the uncompensated taking of private property in violation of the Fifth Amendment to the U.S. Constitution.

Background

The Congress enacted the ESA in 1973 to protect plant and animal species whose survival is in jeopardy. The Secretary of the Interior, through the U.S. Fish and Wildlife Service, generally is responsible for implementing the ESA for freshwater and land species.² Section 9 of the act, its primary species protection provision, and ESA’s implementing regulations generally prohibit the taking of threatened or endangered fish and wildlife species (listed species). In addition to this provision, the act established two important processes that provide for the protection of listed species existing on nonfederal lands—the consultation process under section 7 and the habitat conservation planning process under section 10.

The consultation process under section 7 can affect nonfederal landowners if a project or activity on nonfederal lands requires some form

¹“Taking” is defined broadly and includes killing, harming, or harassing protected animal species and, in certain instances, modifying their habitat. While the taking provision does not apply to plant species, plants do receive protection under other provisions of the ESA.

²The Secretary of Commerce, through the National Marine Fisheries Service, is responsible for most saltwater species protected under the ESA.

of federal approval, such as a permit, or involves the expenditure of federal funds. Specifically, section 7 requires, among other things, federal agencies to consult with the Service to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species, including plants, or damage its “critical habitat”—that is, habitat that the Service has deemed essential to the species’ survival and that may require special management or protection. If a consultation determines that a federally authorized or funded activity on nonfederal lands is likely to adversely affect listed species, the nonfederal landowner (or the authorizing federal agency) may be required to implement actions to minimize and/or mitigate the activity’s impact on listed species or their critical habitat.

The habitat conservation planning process under section 10 provides a mechanism to address situations in which nonfederal projects or activities not requiring federal authorization or funding are in potential conflict with the protection of listed species; that is, such projects or activities may result in a prohibited taking of a listed animal or plant. Through this process, nonfederal landowners with activities or projects that may harm listed species can obtain a permit that allows the incidental taking of a listed species.

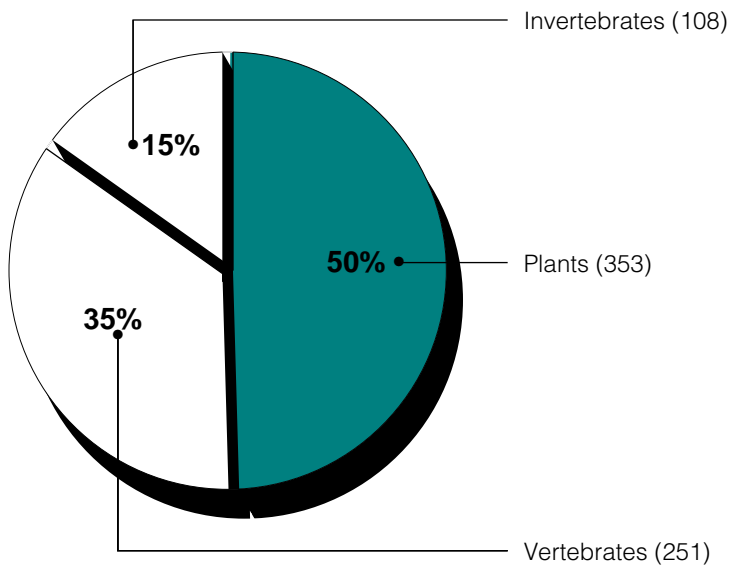
To obtain an “incidental take” permit, the nonfederal landowner must develop a habitat conservation plan (HCP)—a formal plan that specifies the effects that landowners’ activities are likely to have on listed species, the measures that will be taken to minimize and mitigate these effects, the alternatives that the applicant considered and reasons why such alternatives were not implemented, and any other measures the Service may require. Typical activities in the process of developing an HCP include identifying affected listed species and probable impacts, negotiating with the Service over appropriate mitigation measures, and developing an environmental impact statement or environmental assessment.³ The Service cannot approve a plan and issue a permit allowing incidental taking, however, if doing so would appreciably reduce the species’ chances for survival and recovery.

³These are public documents required under the National Environmental Policy Act (NEPA). The purpose of NEPA is to foster a full disclosure and analysis of the environmental issues surrounding a proposed federal action.

Listed Species' Habitat Is Predominately on Nonfederal Lands

Over 90 percent (712 of 781) of the listed species in the United States for which the Service had responsibility as of May 10, 1993, have some or all of their habitat on nonfederal lands. The 712 species with habitat on nonfederal lands are divided approximately equally between plants and animals (vertebrates and invertebrates) (see fig. 1).

Figure 1: Type of Listed Species With Nonfederal Habitat



Note: Total number of species with nonfederal land habitat: 712

Nonfederal lands represent a considerable portion of the total habitat for most of the 712 species. Table 1 provides data on the portion of the habitat for the 712 species that is on nonfederal lands.

Table 1: Portion of Listed Species' Habitat on Nonfederal Lands

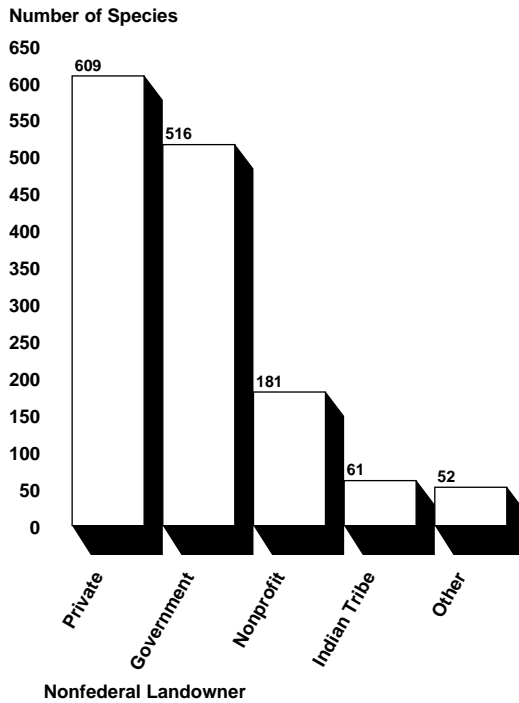
Estimated percentage of habitat on nonfederal lands	Number of listed species			
	Vertebrates	Invertebrates	Plants	Total
1-20 percent	31	4	34	69
21-40 percent	24	6	16	46
41-60 percent	40	7	33	80
61-80 percent	40	5	30	75
81-99 percent	72	54	52	178
100 percent	44	32	188	264
Total	251	108	353	712

According to the data in table 1, 517 (about 73 percent) of the 712 species have over 60 percent of their total habitat on nonfederal lands, while 264 (about 37 percent) of the 712 species are completely dependent on nonfederal lands for their habitat.

Many listed species share their nonfederal habitat with other listed species. More specifically, 454 species exist with other listed species on the same nonfederal lands. Of these, 138 share the same nonfederal habitat with 1 other listed species, while 155 share nonfederal habitat with 5 or more other listed species.

Nonfederal lands containing habitat for listed species are owned by a variety of landowners. Private landowners (private citizens and companies or corporations) are the most prevalent type of owner; 609 species have some or all of their habitat on these lands. Governmental entities (state, county, and/or city governments) are the owners of lands with habitat for 516 listed species. Examples of other owners of lands containing habitat for listed species include utilities, water districts, a port district, airports, and universities. Figure 2 provides information on the types of landowners and the number of listed species having habitat on their lands.

Figure 2: Type of Nonfederal Landowner With Habitat of Listed Species



Note: "Private" = private citizen and/or company corporation; "Government" = state, county, and/or city government.

Some nonfederal lands have been designated as critical habitat for certain listed species. As stated previously, if habitat is designated as critical for a species, the Service has determined that the habitat is essential to the survival of the species and may require special management or protection. Critical habitat designated on nonfederal lands receives protection under the ESA only when an activity affecting that habitat is included in a consultation under section 7. According to data provided by the Service, 80 of the 105 species for which critical habitat has been designated have a portion of that critical habitat on nonfederal lands. More than half of these, or 43 species, have over 80 percent of their critical habitat on nonfederal lands.

The Act Has Addressed Species Protection on Nonfederal Lands

As previously discussed, the consultation process and the habitat conservation planning process of the ESA are the primary mechanisms that the act establishes for species protection on nonfederal lands. These processes have addressed potential conflicts between species protection and nonfederal land use activities. In such instances, nonfederal landowners have been required to modify their planned or ongoing activities to minimize and/or mitigate the impacts of their activities on protected species.

Consultations often begin informally to determine whether a federal agency's action may adversely affect a protected species or its critical habitat. If the Service determines that the action may have an adverse effect, a formal consultation is undertaken. During either informal or formal consultations, the Service may identify actions that can be taken to avoid adverse impacts.

Service-wide data identifying all instances in which the consultation process addressed species protection on nonfederal lands are not readily available. Therefore, we surveyed Service officials and reviewed records documenting the results of selected formal and informal consultations to determine how potential conflicts between species protection and nonfederal land use activities have been addressed. The following examples briefly describe actions that nonfederal landowners have been required to take to provide protection for species.

- A California developer had proposed building a retail outlet mall on land containing wetland habitat for the Sebastapol meadowfoam, a protected plant. Because the developer needed authorization from the U.S. Army Corps of Engineers (Corps)⁴ to fill wetland areas, the Corps consulted with the Service on measures the developer needed to take to mitigate the project's impact on the plant. The consultation, which proceeded to the formal stage, resulted in the developer's agreeing to (1) establish a new Sebastapol meadowfoam colony in an off-site area and (2) acquire and protect additional habitat containing an existing natural population of the species.
- Land planned for the expansion of a golf course within a state park near Austin, Texas, contains critical habitat for the protected Houston toad. In October 1993, the Service, the National Park Service,⁵ and the project's proponent (the Texas Parks and Wildlife Department) initiated formal

⁴Under the Clean Water Act, the Corps must issue a permit for dredging or filling wetlands.

⁵The Park Service proposed to provide some funding for the project with Land and Water Conservation funds.

consultation on the project's impact on the toad. In April 1994, the Service informed the Park Service of its determination that the project, as proposed, would destroy or adversely modify critical habitat for the toad.

In its draft biological opinion on the proposed project's potential impact on the toad, the Service identified two alternatives to the project. One alternative would avoid adversely modifying the toad's critical habitat and avoid off-site impacts to the toad by relocating the project to a site that did not include toad habitat. The other was to build the golf course as planned while implementing measures designed to minimize and offset impacts on the toad. These actions would be in addition to various conservation measures previously proposed by the applicant and would include prohibiting the use of any pesticides found by the Service to be a threat to the toad, controlling erosion during construction and until the site was revegetated, performing construction during the toad's nonbreeding season, managing habitat areas for the toad, and increasing from 260 acres to 340 acres the amount of habitat to be acquired to offset the expected loss of 235 acres of the toad's habitat.

As of October 1994, the Service did not know how the Park Service and the project's proponent would respond. According to a Service official, the project will also need the approval of the Texas Parks and Wildlife Commission, which will consider factors in addition to the project's potential impacts on the toad.

- A privately owned company in California that produces salt owns land containing habitat for two protected species—the salt marsh harvest mouse and California clapper rail (a bird). As a result of a formal consultation with the Service and the Corps, the company was required to modify the dredge-and-fill practices used to maintain its salt ponds to reduce the practices' adverse impacts on the species. Specifically, the Corps' dredging permit directed the company to (1) avoid areas with active nests belonging to the clapper rail, (2) minimize the amount of dredge material deposited in the species' marsh habitat, and (3) reestablish marsh vegetation in areas disturbed by the dredge-and-fill operations.
- Sand and gravel dredging operations occurring on private lands along streams in the Ozarks region of Missouri have been modified to protect the Niangua darter, a protected fish. The dredging activity, in many cases, occurs in areas designated as critical habitat for the darter. Through informal consultations with the Corps, which issues permits for the dredging operations, the Service prescribed measures to protect the fish,

including a year-round prohibition on dredging in flowing water and a ban on all operations during the darter's spawning period, which occurs between March 15 and June 15.

The habitat conservation planning process, which includes the issuance of incidental take permits, has also addressed conflicts between species protection and activities on nonfederal lands. As of June 1, 1994, the Service had approved 31 HCPS, and approximately 132 plans were being developed or awaiting the Service's approval. Incidental take permits for 27 different species are associated with the approved HCPS. (Summary data on the 31 approved HCPS are contained in app. I.)

The scope and complexity of approved HCPS vary. Some HCPS have addressed how development or other land use activities and species protection will be achieved in large geographic areas where there are many nonfederal landowners and a broad range of residential and commercial development activities planned and under way. Others address species impacts and the protection of species in the context of a site-specific project or the activity of one nonfederal landowner. The incidental take permits associated with the 31 approved plans cover varying time periods—for 8 permits, the period is 5 years or less, while for 18 permits, the period is 20 years or more. According to Service officials, the time required to develop and gain the Service's approval of an HCP generally ranges from about 4 months to 3 years, depending on the complexity of the HCP and the progress of negotiations.

While HCPS contain a variety of measures that participants are to take to minimize and mitigate impacts on species, nearly all plans contain specific provisions for replacing habitat expected to be lost as a result of the planned projects. Also, plans often call for nonfederal landowners, while carrying out their activities, to take specific steps to minimize the impacts of those activities on individual species. The following examples illustrate the types of measures nonfederal landowners were to take to minimize and mitigate impacts of their activities on protected species. The first example describes an HCP covering a relatively large area, and the second, a site-specific location.

- In September 1989, Clark County, Nevada, and five cities in the Las Vegas Valley began developing a short-term HCP that would allow development in the area to proceed and provide immediate protection for the desert tortoise until a long-term HCP could be developed. The area addressed under the short-term HCP covers approximately 300,000 acres, about

200,000 of which are privately owned. Approximately 22,000 acres are expected to be developed during the 3 years under the short-term HCP, leading to the taking of 1,788 to 3,710 tortoises.

The HCP establishes four activities designed to minimize and monitor the taking of tortoises: (1) surveying and removing tortoises at the developer's expense before disturbing a site;⁶ (2) placing the tortoises removed from project sites in research, relocation programs, zoos, museum exhibits, educational facilities, and adoption programs; (3) reviewing and monitoring projects through the submission of an HCP compliance form, before disturbing a site, which identifies the projects and the results of the efforts to survey and remove tortoises; and (4) conducting a public information program designed to inform local residents of the HCP's purpose and conditions.

To mitigate the incidental taking of tortoises, the HCP calls for conserving and managing at least 400,000 acres of existing federal land as desert tortoise habitat. Management of the habitat includes such land use controls as eliminating grazing, restricting off-highway vehicles and intensive recreation, and prohibiting new mining claims. To provide a scientific basis for designing and managing the habitat, the county and cities are responsible for establishing a tortoise research and relocation program focusing on such issues as the effects of grazing, predation on the tortoise, the genetics and demography of the tortoise, and the reintroduction of the animals into suitable habitat. Projects' proponents in the HCP area are required to pay a \$550 per acre mitigation fee to fund the HCP's conservation and mitigation measures.

- The Coalinga Cogeneration Company contacted the Service in 1989 about its plans to construct a cogeneration plant in Fresno County, California, designed to generate steam and electrical power for use in recovering crude oil from a nearby oil field. The construction and operation of the plant was expected to result in (1) the permanent loss of 43.7 acres of habitat for the endangered San Joaquin kit fox and (2) the temporary disturbance of an additional 43.7 acres of habitat for this species. In addition, vehicle traffic associated with the project could also result in the taking of the protected blunt-nosed leopard lizard. To mitigate the project's impacts on the two species, the HCP calls for the company to acquire 179 acres of habitat to be managed solely for the conservation, restoration, and enhancement of the species. The HCP also provides

⁶This requirement does not apply to projects in specified exclusionary zones in highly urbanized areas or projects that meet certain criteria (for example, projects being reconstructed as a result of fire, rehabilitated or remodeled, etc.).

funding of \$107,400 (\$600 per acre) for acquiring the habitat, \$17,900 (\$100 per acre) for protective fencing, and \$53,700 (\$300 per acre) for long-term management of the acquired lands.

The HCP contains numerous measures for minimizing the taking of the two species during the plant's construction and operation. Examples include hiring a qualified biologist to identify occupied kit fox dens on lands subject to modification, establishing fenced exclusion zones around all known dens that may be affected by construction, excavating by hand all known and potential dens that would be destroyed during construction (to ensure that no foxes are trapped or injured), and covering holes and trenches deeper than 2 feet at the end of the work day or installing escape ramps to prevent entrapment of the animals. The company also agreed to establish an employee orientation program covering such topics as the biology and habitat needs of the two species, their status under the ESA, and the HCP's measures for their protection.

Legal Actions Have Been Taken to Protect Species

Legal actions involving nonfederal lands or directed at individuals to protect listed species have been taken using the authorities contained in the ESA. Legal actions have also been taken as a result of the protection afforded to listed species. More specifically, (1) the Service has initiated legal actions to enforce the act's prohibition against the taking of listed species, (2) the United States and other parties have sought injunctive relief using the act's provisions to stop or delay activities on nonfederal lands that were viewed as posing a threat to listed species, and (3) private citizens have claimed that species protection efforts have resulted in the loss of property without compensation in violation of the Fifth Amendment to the Constitution.

We obtained Service-wide information on enforcement actions under the ESA from the Service's computerized law enforcement data base. According to the data base, for fiscal years 1988 through 1993, about 4,230 violations of the ESA had been adjudicated. While the majority of these violations involved instances of illegal imports or exports of listed species or of products made from listed species,⁷ the data base showed that 126 (about 3 percent of all violations) involved the illegal taking of a listed species within the United States.

⁷According to Service officials, data maintained in the Service's Law Enforcement Management Information System (a computerized data base) on the Service's wildlife inspection program's activities may be incomplete.

In connection with the 126 violations, the Service's data base showed that 86 involved criminal charges, and 40 involved civil charges. Of the 86 criminal violations, the data base identified a result for 71. For these 71, many of which had more than one result,

- fines ranging from \$25 to \$50,000 were levied in 59 instances (in 21, fines were \$1,000 or more),
- fines were suspended in 2 instances,
- jail sentences ranging from 10 days to 1,170 days were given in 18 instances,
- jail sentences were suspended in 2 instances, and
- probation ranging from 182 days to 1,825 days was given in 33 instances.

Of the 40 civil violations, 20 resulted in a total of about \$138,000 in civil penalties. Civil penalties assessed in individual instances ranged from \$50 to \$50,000.

To obtain information about takings investigations and the basis for initiating takings prosecutions associated with nonfederal lands, we surveyed Service law enforcement officials. According to these officials, for the period from January 1, 1988, through September 30, 1993, 321 investigations of the illegal taking of listed species on nonfederal lands and 100 prosecutions had been initiated.⁸ Table 2 shows the basis for and outcome of the 100 prosecutions, according to these officials.

⁸The investigations and prosecutions may include instances involving a mix of federal and nonfederal lands and violations of statutes in addition to the ESA. Cases involving the taking of bald eagles are not included because Service officials stated that these cases are typically prosecuted under other statutes, such as the Bald Eagle Protection Act.

Table 2: Disposition of Cases Prosecuted for the Illegal Taking of Species Under the ESA, Jan. 1988-Sept. 1993

Type of outcome for prosecution initiated	Number of prosecutions
Conviction based on species mortality	32
Conviction based on modification of habitat	7
Conviction based on both mortality and habitat modification	1
Conviction based on species harassment	1
Out-of-court settlement	16
No conviction	8
Still in litigation	29
Other ^a	6
Total	100

^a“Other” includes cases awaiting authorization for assessment of civil penalties and one case in pretrial discussion.

We also found that since January 1, 1983, the federal government or some other party obtained injunctive relief in at least four instances to stop or delay an activity on nonfederal lands that could harm a listed species for which the Service has responsibility.⁹ The following briefly summarizes these instances:

- As a result of a suit brought by the Sierra Club and others against the Hawaii Department of Land and Natural Resources, et al, the U.S. District Court ruled in November 1986 that the state’s maintenance of a population of mouflon sheep for hunting purposes was harming the palila, a listed bird. The court ordered the state to remove the sheep from the bird’s critical habitat. This ruling was upheld on appeal.
- In July 1990, the United States obtained a temporary restraining order restricting beach-cleaning activities on private land that could lead to the taking of four listed piping plovers. The involved parties subsequently signed a settlement agreement that provided protection for the birds while allowing some beach-cleaning activities to continue.
- In December 1993, the United States brought suit to stop a logging company from harvesting timber on its lands in Washington state. The United States alleged that the harvest would have resulted in the taking of a pair of listed northern spotted owls. The parties first agreed to a temporary restraining order that prohibited timber harvest activities pending a decision on the United States’ motion for a preliminary

⁹An additional instance of injunctive relief obtained under the authorities of the ESA involved a listed species under the protection of the Department of Commerce’s National Marine Fisheries Service.

injunction. In January 1994, the parties agreed to continue the prohibition on harvesting until the matter is resolved at trial.

- An environmental group obtained a preliminary injunction in February 1994 to halt the logging of old-growth forest on private lands in California, which was allegedly resulting in the taking of the marbled murrelet (a listed bird).

Concerning certain legal proceedings that claim a violation of the Fifth Amendment to the Constitution resulting from species protection under the ESA, as of May 1994, according to the Congressional Research Service, only two reported court decisions had been reached. In one case, a rancher sought compensation from the United States because the ESA prohibited him from killing grizzly bears that preyed on his sheep. The court ruled that since the government neither owned nor controlled the grizzly bears, it was not responsible for their actions.¹⁰ The other case involved an individual who had transported a listed cougar and a listed leopard from Florida to Kentucky in violation of the ESA's ban on the transportation of endangered animals in interstate (and foreign) commerce. The individual claimed that the government's seizure of these animals deprived him of his property without just compensation and due process. The court found no constitutional taking since the ESA only prevented the sale of the endangered animals in interstate commerce, leaving the individual the option of selling the animals within the state of Florida.¹¹

Agency Comments

In commenting on a draft of this report, the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, stated that the report's discussion of the application of section 7 and section 10 of the ESA to nonfederal land use activities was accurate. (See app. II.)

Our review was conducted between June 1993 and October 1994 in accordance with generally accepted government auditing standards. A discussion of the scope and methodology for our work is contained in appendix III.

Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to the appropriate congressional committees; the

¹⁰Christy v. Hodel, 857 F.2d 1324 (9th Cir. 1988), cert. denied, 490 U.S. 1114 (1989).

¹¹U.S. v. Kepler, 531 F.2d 796 (6th Cir. 1976).

Secretary of the Interior; and the Director, U.S. Fish & Wildlife Service. We will also make copies available to others upon request. Please call me on (202) 512-7756 if you or your staff have any questions. Major contributors to this report are listed in appendix IV.

A handwritten signature in black ink that reads "James Duffus III". The signature is written in a cursive style with a large, looping initial "J".

James Duffus III
Director, Natural Resources
Management Issues

Contents

Letter		1
Appendix I Summary of Approved Habitat Conservation Plans (as of 06/01/94)		18
Appendix II Comments From the Department of the Interior		21
Appendix III Scope and Methodology		22
Appendix IV Major Contributors to This Report		23
Tables	Table 1: Portion of Listed Species' Habitat on Nonfederal Lands	5
	Table 2: Disposition of Cases Prosecuted for the Illegal Taking of Species Under the ESA, Jan. 1988-Sept. 1993	13
Figures	Figure 1: Type of Listed Species With Nonfederal Habitat	4
	Figure 2: Type of Nonfederal Landowner With Habitat of Listed Species	6

Abbreviations

ESA	Endangered Species Act
FWS	Fish and Wildlife Service
GAO	General Accounting Office
HCP	habitat conservation plan
NEPA	National Environmental Policy Act

Summary of Approved Habitat Conservation Plans (as of 06/01/94)

Plan title	Location	Dates effective	Listed species ^a	Total HCP area ^b	Project description
Fish and Wildlife Service Region 1					
San Bruno Mountain	San Mateo County, California	3/4/83 - 3/31/2013	Mission blue butterfly, San Bruno elfin butterfly, San Francisco garter snake	3,600 acres	Various public and private projects including residential and commercial development
Coachella Valley	Riverside County, California	4/25/86 - 4/30/2016	Coachella Valley fringe-toed lizard	240,000 acres	Various public and private projects including residential and commercial development
California Dept. of Corrections, Delano Prison	Kern County, California	1/18/90 - 12/31/2040	San Joaquin kit fox, blunt-nosed leopard lizard, Tipton kangaroo rat	635 acres	Construction and operation of a state correctional facility
County of Riverside (short term permit)	Riverside County, California	8/1/90 - 9/30/94	Stephens' kangaroo rat	300,000 acres ^c	Various public and private projects including residential and commercial development
Lennane Properties	Sacramento, California	8/17/90 - 7/31/95	Valley elderberry longhorn beetle	48 acres	A development including office, retail, and residential dwellings, as well as a hotel
City of Marysville	Yuba County, California	1/29/91 - 1/31/97	Valley elderberry longhorn beetle	27 acres	Construction and operation of effluent disposal ponds
Coalinga Cogeneration	Fresno County, California	3/21/91 - 3/31/2011	San Joaquin kit fox, blunt-nosed leopard lizard	43.7 acres	Construction and operation of a 38-megawatt cogeneration facility
Clark County (short term permit)	Clark County, Nevada	7/24/91 - 7/31/94	Desert tortoise	299,700 acres	Various public and private projects including residential and commercial development
Corona Development Co.	Riverside County, California	12/30/91 - 12/31/98	Stephens' kangaroo rat	627 acres	Construction of a residential development
Simpson Timber Co.	Del Norte, Humboldt, Mendocino, and Trinity Counties, California	9/17/92 - 9/16/2022	Northern spotted owl	383,100 acres	Timber harvesting operations
Citation Builders	Riverside County, California	9/28/92 - 9/28/94	Stephens' kangaroo rat	21.6 acres	A residential development

(continued)

**Appendix I
Summary of Approved Habitat Conservation
Plans (as of 06/01/94)**

Plan title	Location	Dates effective	Listed species^a	Total HCP area^b	Project description
Envirocycle	Kern County, California	2/26/93 - 2/26/2043	San Joaquin kit fox, blunt-nosed leopard lizard, giant kangaroo rat	20 acres	Construction and operation of a waste solids transfer and processing plant
Yucca Valley Church Sites	San Bernardino County, California	8/26/93 - 8/26/96	Desert tortoise	4.8 acres	Construction of church buildings and related facilities
Murray Pacific Corp.	Lewis County, Washington	9/24/93 - 9/24/2093	Northern spotted owl	54,610 acres	Timber harvesting operations
Coyote Hills East	Fullerton, California	10/22/93 - 10/22/2018	California gnatcatcher	391 acres	A golf course and residential community
Granite Construction	Fresno County, California	12/29/93 - 12/29/2013	San Joaquin kit fox, blunt-nosed leopard lizard	54 acres	Expansion of a sand and gravel extraction operation
Valley of Fire State Park	Clark County, Nevada	1/20/94 - 1/20/2024	Desert tortoise	16.58 acres	Reconstruction and operation of a road within a state park
Pacific Gateway Homes	Riverside County, California	5/27/94 - 5/27/96	Stephens' kangaroo rat	30.75 acres	A residential development
Champagne Shores	Kern County, California	6/1/94 - 6/1/2024	Tipton kangaroo rat	82 acres	Construction and operation of an artificial water ski lake and associated residential development
Fish and Wildlife Service Region 2					
LakeLine Mall	Austin, Texas	2/13/92 - 2/13/2022	Bee Creek harvestman, Tooth Cave ground beetle,	116 acres	A shopping mall
Canyon Ridge	Austin, Texas	8/17/93 - 8/17/2013	Golden-cheeked warbler	142.61 acres	A mixed residential, commercial, and office development
Lake Pointe	Travis County, Texas	2/15/94 - 2/28/2009	Golden cheeked warbler	496 acres	A single- family residential and commercial development
Fish and Wildlife Service Region 4					
Nichols/Hendrix/Post	North Key Largo, Florida	10/10/86 - 12/31/91	Key Largo woodrat, Key Largo cotton mouse	9 acres	A residential development
Driscoll Properties, Inc.	Monroe County, Florida	6/6/90 - 5/31/95	Key Largo woodrat, Key Largo cotton mouse, Schaus swallowtail butterfly	42 acres	Land clearing and construction of residential homes
Wal-Mart Stores, Inc.	Highlands County, Florida	3/11/93 - 3/11/94	Florida scrub jay, eastern indigo snake, blue-tailed mole skink, sand skink	24.26 acres	A retail store

(continued)

**Appendix I
Summary of Approved Habitat Conservation
Plans (as of 06/01/94)**

Plan title	Location	Dates effective	Listed species^a	Total HCP area^b	Project description
International Paper	Monroe and Conecuh Counties, Alabama	10/21/93 - 10/21/2024	Red Hills salamander	30,000 acres	Timber harvest operations
Sea Mist, Inc.	Baldwin County, Alabama	12/27/93 - 12/27/2023	Alabama beach mouse	46 acres	A residential development
D&E Investments, Ltd.	Baldwin County, Alabama	4/29/94 - 4/29/2024	Alabama beach mouse	252 acres	A residential development
Fel-Kran, Inc.	Baldwin, County Alabama	5/4/94 - 5/4/2024	Perdido Key beach mouse	27 acres	A residential development with associated piers
Ocean Ridge, Ltd.	Brevard County, Florida	5/30/94 - 5/30/2004	Florida scrub jay	8.2 acres	A residential development
Fish and Wildlife Service Region 6					
Hell Canyon Quarry	Salt Lake City, Utah	2/10/94 - 2/10/2014	American peregrine falcon	30 acres	Operation of a quarry producing limestone, sand, and gravel

^aSpecies listed here are those specifically covered by the incidental take permit. In some cases, listed plants, candidate species, and/or other species of concern are addressed in the HCP.

^bTotal HCP area acres is the size of the planning area within which the activity or development will occur.

^cThis figure represents the historic range of the Stephens' kangaroo rat. The total HCP area is somewhat smaller.

Comments From the Department of the Interior



United States Department of the Interior



OFFICE OF THE SECRETARY

Washington, D.C. 20240

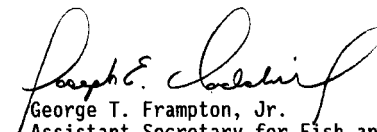
December 5, 1994

Mr. James Duffus III
Director
Natural Resources Management Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Duffus:

This responds to your October 17, 1994, letter to Secretary Babbitt concerning the GAO report entitled, Endangered Species Act: Information on Species Protection on Nonfederal Lands (GAO/RCED-95-16). We have reviewed the subject report and find that its contents with respect to the application of section 7 and section 10 of the Endangered Species Act to non-Federal land use activities are accurate. We appreciate the opportunity to comment on this report.

Sincerely,

For 
George T. Frampton, Jr.
Assistant Secretary for Fish and
Wildlife and Parks

Scope and Methodology

In preparing this report, we examined the Endangered Species Act (ESA) and the applicable federal regulations to identify the processes that the ESA establishes for protecting species on nonfederal lands. We obtained information on efforts to protect species on nonfederal lands by sending a written survey to the U.S. Fish and Wildlife Service's (FWS') seven regional offices. We pretested this survey instrument at three FWS regional offices and two FWS field offices and obtained comments from the Division of Endangered Species at FWS headquarters.

Using the survey, we collected data on (1) the number of ESA-protected species with habitat on nonfederal lands, (2) the portion of these species' habitat on nonfederal lands, (3) the number of law enforcement investigations and prosecutions related to ESA takings on nonfederal lands, and (4) instances in which injunctive relief was obtained under the ESA to stop or delay nonfederal land projects or activities that could potentially harm protected species. We discussed the completeness and accuracy of the survey data with personnel from all of FWS' regional offices and over 30 field locations. Many of these officials provided us with additional details on their responses to certain questions.

We obtained information on specific instances in which potential conflicts existed between species protection and nonfederal land use activities through a review of FWS documents and records describing the results of consultations under section 7 of the ESA and a review of approved habitat conservation plans. We also discussed these specific instances with knowledgeable FWS officials. Finally, we contacted knowledgeable individuals from agencies and organizations outside of FWS to verify information on injunctive relief obtained under the ESA and to obtain information on constitutional taking claims.

Our review included species listed in the United States as of May 10, 1993.¹² As agreed, we did not include species for which the National Marine Fisheries Service has responsibility.

¹²This includes species with habitats on nonfederal lands in Puerto Rico, the Commonwealth of the North Marianas Islands, Guam, the Federated States of Micronesia, and the Virgin Islands.

Major Contributors to This Report

Resources,
Community, and
Economic
Development
Division, Washington,
D.C.

Paul Grace
Fran Featherston

Seattle Regional
Office

William K. Garber

Ordering Information

The first copy of each GAO report and testimony is free. Additional copies are \$2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

Orders by mail:

U.S. General Accounting Office
P.O. Box 6015
Gaithersburg, MD 20884-6015

or visit:

Room 1100
700 4th St. NW (corner of 4th and G Sts. NW)
U.S. General Accounting Office
Washington, DC

Orders may also be placed by calling (202) 512-6000 or by using fax number (301) 258-4066, or TDD (301) 413-0006.

Each day, GAO issues a list of newly available reports and testimony. To receive facsimile copies of the daily list or any list from the past 30 days, please call (301) 258-4097 using a touchtone phone. A recorded menu will provide information on how to obtain these lists.

**United States
General Accounting Office
Washington, D.C. 20548-0001**

**Bulk Mail
Postage & Fees Paid
GAO
Permit No. G100**

**Official Business
Penalty for Private Use \$300**

Address Correction Requested



