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The Honorable Nick J. Rahall, II
Chairman
Committee on Natural Resources
House of Representatives

The Honorable Peter DeFazio
House of Representatives

The Honorable Jay Inslee
House of Representatives

Subject: *Endangered Species Act: Many GAO Recommendations Have Been Implemented, but Some Issues Remain Unresolved*

The Endangered Species Act (ESA) of 1973 protects plant and animal species that are either facing extinction (endangered species) or are likely to face extinction in the foreseeable future (threatened species) and protects the ecosystems upon which they depend. The act includes provisions for listing species that need protection, designating habitat deemed critical to a listed species' survival, developing recovery plans, and protecting listed species against certain harms caused by federal and nonfederal actions. Since the act's inception, more than 1,300 species occurring in the United States or its territories have been placed on the list of threatened and endangered species. The Department of the Interior's U.S. Fish and Wildlife Service (FWS) and the Department of Commerce's National Marine Fisheries Service (NMFS)—collectively referred to as “the services”—are responsible for administration and implementation of the ESA, but all federal agencies have responsibilities for protecting species under the act.¹

The act has long been a lightning rod for political debate about the extent to which the nation's natural resources should be protected and how best to protect them. Proponents of the act believe that it is important to preserve the unique characteristics of each species as a practical response to the impact that humans are having on the earth, and some believe that there is a moral obligation to do so. Some critics of the act deemphasize the importance of preserving every individual species and argue that doing so, in many cases, is too costly—especially when implementation of the act results in restricting the use of public and private land and resources. Others question the validity and completeness of the data used to make decisions under the act. Litigation regarding various aspects of implementation of the act has consumed considerable program resources.

¹FWS has primary responsibility for freshwater and terrestrial species, while NMFS has primary responsibility for most marine species and anadromous fishes, which spend portions of their life cycle in both fresh and salt water.

Over the last 10 years, we have reported on many of the major program areas of the ESA—listing, critical habitat, recovery, and the consultation process by which federal agencies ensure that their actions do not cause certain harms to listed species—and have made a number of recommendations for improvements. This report discusses recommendations that have been implemented and those that have not. Three of the five enclosures to this report contain background on the ESA (enc. I), a report-by-report summary of the actions taken to implement GAO recommendations (enc. II), and a list of GAO reports that discuss the ESA but do not contain recommendations related to its implementation (enc. III).

To conduct this follow-up review, we gathered information on agency actions from program officials and reviewed documentation where appropriate. We conducted this performance audit from August 2008 to December 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We provided a draft of this report to those federal agencies to which we made prior recommendations: the U.S. Department of Agriculture (USDA), Commerce, the Department of Defense (DOD), and Interior.

Summary

FWS, NMFS, and other federal agencies have implemented a majority of the recommendations that we have made over the last 10 years to strengthen implementation of the act. For example, FWS and NMFS have directed staff to include time and cost estimates for recovering species in recovery plans as well as a discussion of the five criteria used to make listing and delisting decisions to reduce confusion about when it is appropriate to propose delisting a species. In addition, FWS, NMFS, and some federal agencies they consult with on federal actions have continued to work together to improve efficiencies in the consultation process by adding guidance, expanding training, and disseminating information about the process. The agencies have also evaluated and incorporated improvements to the process, including “streamlining,” in which interagency teams of biologists seek consensus on proposed actions prior to formal consultation. Furthermore, FWS and other agencies have signed memorandums of understanding to enhance and encourage collaboration for the conservation of listed species. For example, in 2005, USDA, DOD, and Interior signed an interagency action plan for endangered species management affecting DOD lands. As we have previously mentioned, we discuss other recommendations that have been implemented in enclosure II.

Almost one-third of our recommendations, however, have not been implemented. Specifically,

- FWS has yet to clarify the role of critical habitat and how and when it should be designated, as we recommended in 2002 and 2003.² As we noted in our reports, the critical habitat process has been the subject of significant litigation, largely due to

²GAO, *Endangered Species Program: Information on How Funds Are Allocated and What Activities Are Emphasized*, [GAO-02-581](#) (Washington, D.C.: June 25, 2002), and *Endangered Species: Fish and Wildlife Service Uses Best Available Science to Make Listing Decisions, but Additional Guidance Needed for Critical Habitat Designations*, [GAO-03-803](#) (Washington, D.C.: Aug. 29, 2003).

FWS not designating habitat when required, and has consumed significant program resources. FWS has drafted a policy document that is going through departmental review, and, in 2006, the service convened a team to provide recommendations to the Secretary of the Interior regarding changes to the regulations implementing the act. FWS does not expect the policy or regulations to be final until the spring of 2009 or later. Delays have been caused by higher-priority work; court decisions, including adverse rulings; and other policy decisions.

- FWS has not issued annual endangered species expenditure reports in a timely fashion, as we recommended in 2003.³ Reports for fiscal years 2005 and 2006 were issued in December 2008; the report for expenditures in fiscal year 2007 is expected to be issued in early 2009. An FWS official told us that FWS has issued these reports late because of delays in receiving data from some states, but that the agency is implementing a new process to improve their timeliness in issuing future reports.
- FWS, NMFS, and other federal agencies either have not resolved certain disagreements in the consultation process or have not ensured that their agreements are disseminated to all staff involved in consultations, as we recommended in 2004.⁴ For example, the agencies disagree about how to evaluate the impact of ongoing water operations—such as dam operations—that began before enactment of the ESA. Some agency officials believe that these types of disagreements are inherent, given the competing priorities of some agency missions and implementation of the ESA, and need to be dealt with on a case-by-case basis. However, other officials believe that additional guidance would be helpful in resolving these disagreements.
- FWS and NMFS are not tracking the amount of time spent by federal agencies during “preconsultation”; that is, the time spent preparing for consultation before the process officially begins. We recommended in 2004 that the agencies do so in response to a myriad of concerns about the length of time spent in preconsultation.⁵ FWS and NMFS officials told us that they have not tracked time in preconsultation because doing so is difficult. NMFS officials said that they have instead focused resources on higher-priority activities. FWS recently formed an oversight committee for their consultation tracking system and will consider tracking preconsultation activities. We recognize the difficulty that may be involved in tracking the time spent, and it appears that concerns about the time spent in preconsultation have lessened now that the agencies have more experience with the process.
- Although it has plans to do so, FWS has not periodically assessed expenditures on species in relation to their relative priority, nor has it publicly discussed the factors other than relative priority that affect funding decisions, as we recommended in 2005.⁶

³GAO, *Endangered Species: Research Strategy and Long-Term Monitoring Needed for the Mojave Desert Tortoise Recovery Program*, [GAO-03-23](#) (Washington, D.C.: Dec. 9, 2002).

⁴GAO, *Endangered Species: More Federal Management Attention Is Needed to Improve the Consultation Process*, [GAO-04-93](#) (Washington, D.C.: Mar. 19, 2004).

⁵[GAO-04-93](#).

⁶GAO, *Endangered Species: Fish and Wildlife Service Generally Focuses Recovery Funding on High-Priority Species, but Needs to Periodically Assess Its Funding Decisions*, [GAO-05-211](#) (Washington, D.C.: Apr. 6, 2005).

FWS plans to implement both recommendations beginning with the fiscal year 2008 Recovery Report to Congress, which the agency expects to issue by December 2009. We made this recommendation to improve transparency about funding decisions because a number of species that receive significant funding are lower in priority than other species that receive little or no funding.

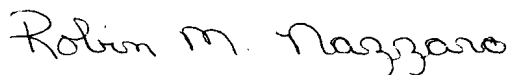
- FWS, the Farm Service Agency (FSA), and the Natural Resources Conservation Service are working together to add FSA to an existing memorandum of understanding for coordinating conservation programs that can benefit threatened and endangered species, as we recommended in 2006; these agencies plan to modify the current memorandum of understanding by September 2009.⁷

Agency Comments

Interior provided additional details on the actions it has taken to address those of our recommendations that have not yet been implemented, and we have incorporated these details as appropriate. Commerce had no comments on the draft report, but noted that it was committed to providing guidance as needed and working with FWS with an ultimate goal of clarifying issues surrounding the consultation process. USDA provided technical clarifications that we have incorporated. DOD had no comments on the draft report. Interior's comment letter is presented in enclosure IV.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to interested congressional committees; the Secretaries of Agriculture, Commerce, Defense, and the Interior; and other interested parties. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your offices have questions about this report, please contact me at (202) 512-3841 or nazzaror@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in enclosure V.



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⁷GAO, *USDA Conservation Programs: Stakeholder Views on Participation and Coordination to Benefit Threatened and Endangered Species and Their Habitats*, GAO-07-35 (Washington, D.C.: Nov. 15, 2006).

Background

The purpose of the Endangered Species Act (ESA) of 1973 is to conserve threatened and endangered species and the ecosystems upon which they depend. An endangered species is a species facing extinction throughout all, or a significant portion of, its range; threatened species are those likely to become endangered in the foreseeable future. The process to “list” species for protection under the act begins either through the Department of the Interior’s U.S. Fish and Wildlife Service’s (FWS) or the Department of Commerce’s National Marine Fisheries Service’s (NMFS) own initiative or through a petition (referred to as a 90-day petition) from an interested person, and it is governed by the act, federal regulations, and other guidance that the services may issue. If petitioned, the services must comply with time frames in the act for responding with a decision about whether a species warrants listing. As of November 2008, 1,331 species that occur in the United States or its territories were listed for protection under the act. FWS has primary responsibility for the vast majority of these species; FWS and NMFS share responsibility for 6 species of sea turtles. When a species is listed, the act also generally requires the agencies to designate critical habitat—which is habitat essential to species conservation. As of November 2008, the services had designated critical habitat for 520 species.

The act requires the services to develop recovery plans for the conservation and survival of threatened and endangered species, unless the services determine that a plan will not promote their conservation. The act directs the services, to the maximum extent practicable, to incorporate in each recovery plan (1) a description of the site-specific management actions necessary to achieve the plan’s goal for the conservation and survival of the species; (2) objective, measurable criteria that will result in a determination that the species can be “delisted,” or removed from the list of threatened and endangered species; and (3) estimates of the time and cost required to carry out the measures needed to achieve the plan’s goal. A recovery plan may include a variety of methods and procedures to recover listed species, such as habitat acquisition and restoration to prevent extinction or further decline, and other on-the-ground activities for managing and monitoring endangered species. The act requires the services to establish guidelines for prioritizing the development and implementation of recovery plans for species.

As of November 2008, 1,128 species had approved recovery plans. The act requires that the Secretaries of Commerce and the Interior report biennially to certain congressional committees on efforts to develop and implement recovery plans and on the status of all species for which plans have been developed. The act also requires FWS to submit to Congress on or before January 15 of each year a report of the prior fiscal year’s federal expenditures for the conservation of threatened and endangered species on a species-by-species basis as well as expenditures by states receiving federal assistance for such conservation activities.

Before authorizing, funding, or carrying out activities, federal agencies must determine whether these activities might affect a listed species or designated critical habitat. If effects are likely, the agencies must consult with FWS and/or NMFS to ensure that the activities will not jeopardize a species’ continued existence or adversely modify its designated critical habitat. To initiate the consultation process, an agency submits a biological assessment or similar document to the services that describes the proposed

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activity and its likely effects on listed species and habitat. Consultation usually ends with the services issuing their own assessments of the likely effects, including any recommendations or requirements to mitigate these effects. Although there are set time frames for completing consultations, federal agencies and the services often discuss proposed activities' designs, effects, mitigation, documentation, or other matters in "preconsultation" sessions, which occur before these time frames begin.

Summary of GAO Recommendations and Implementation Status

GAO-01-203 – Fish and Wildlife Service: Challenges to Managing the Carlsbad, California, Field Office’s Endangered Species Workload

(1) FWS should *ensure that the Carlsbad field office's new computerized project-tracking system for consultations and habitat conservation plans is properly implemented and that procedures are developed to periodically review the data to determine that they are promptly and accurately entered.*

Agency Actions

- The Carlsbad field office developed a computerized database in 2001 to track workload, including section 7 consultations and habitat conservation plans. Supervisory staff developed quality control measures and applied them to the database to help ensure consistency and accuracy of the information entered in the database, and the database administrator implemented random checks on projects entered in the database to ensure that data for all required fields are properly entered.

GAO Analysis

- This recommendation has been implemented.

(2) FWS should *assess whether a computerized project-tracking system, such as the one being implemented in the Carlsbad office, will allow consistency and accuracy in obtaining and reporting information on the status of consultations and the habitat conservation plan workload and, if so, consider whether such a system should be implemented Service-wide.*

Agency Actions

- FWS determined that a computerized project tracking system would assist in improving consistency and accuracy in obtaining and reporting information on the status of consultations and the habitat conservation plan workload.
- FWS implemented a nationwide database—the Tracking and Integrated Logging System (TAILS)—in 2007 that tracks consultations and plans to expand TAILS to include habitat conservation plans in 2009.

GAO Analysis

- This recommendation has been implemented.

(3) FWS should *ensure that the Carlsbad field office complies with federal internal control standards* by centrally locating all files on consultations and habitat conservation plans. Furthermore, the Carlsbad office *should develop procedures to periodically review these files* to determine if they contain the complete history of the projects, including documentation of all agreements between the applicant and the Service.

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Agency Action

- In 2001, the Carlsbad field office purchased additional file storage equipment to centralize all files originating in fiscal year 2001. All project files are now kept in the centralized filing area, and each file is cross-referenced with a unique number that corresponds to its entry in the new computerized database for tracking the office's workload. The office's filing system is also cross-referenced with TAILS.

GAO Analysis

- This recommendation has been implemented.

(4) FWS should *identify and assess options for improving the Carlsbad office's ability to hire and retain staff*.

Agency Action

- Interior worked with the Office of Personnel Management to establish an open register for fish and wildlife biologist positions to help improve the field office's ability to more quickly recruit qualified candidates. Use of the open register became effective in February 2001. FWS officials believed that by filling vacancies, it would contribute to improving the staff retention rate by redistributing and reducing the high workloads that were the cause of some staff separations.

GAO Analysis

- This recommendation has been implemented. However, a Carlsbad official told us that the high cost of living and high workloads continue to be issues for employee retention. This official said that although reduced, loss of staff to other offices and other federal agencies continues.

(5) FWS should *revise its customer service policy* to include specific requirements for a customer complaint system and make that system easily accessible to the public.

Agency Action

- FWS implemented a customer service center that receives questions and complaints from the public and can be accessed via the FWS Web site or a toll-free number, which receives most of the inquiries and is run by a contractor. FWS has written procedures for handling complaints, and the contractor responds to routine questions and refers complex calls to FWS headquarters. The contractor also refers issues to headquarters when it detects particular patterns in the types of calls or concerns that are raised.

GAO Analysis

- This recommendation has been implemented.

Enclosure II

GAO-02-581 – *Endangered Species Program: Information on How Funds Are Allocated and What Activities Are Emphasized*

(1) FWS should expedite its efforts to develop guidance on designating critical habitat for listed species.

Agency Action

- In 1999, Interior published a notice in the *Federal Register* soliciting comments on its intention to develop guidance to clarify the role of critical habitat in conserving endangered species. This notice acknowledged the need for a more efficient and cost-effective process for designating critical habitat, because responding to critical habitat litigation had significantly delayed other service listing activities. FWS has drafted a critical habitat policy that is going through departmental review, and, in 2006, the service convened a team to provide recommendations to the Secretary of the Interior regarding changes to the regulations implementing the act. The draft critical habitat guidance is again being reviewed and revised by FWS to address a recent opinion from Interior’s Office of the Solicitor and draft internal guidance on critical habitat exclusions. FWS does not expect the policy or regulations to be final until the spring of 2009 or later. Delays have been caused by higher-priority work; court decisions, including adverse rulings; and other policy decisions.

GAO Analysis

- This recommendation has not been implemented.

(2) FWS should review the processes being used across the agency to charge staff time to different program areas.

Agency Action

- In 2005, FWS implemented activity-based costing, which is intended—among other things—to ensure that employees record work as it was actually performed, as opposed to how the work was planned or budgeted.

GAO Analysis

- This recommendation has been implemented.

Enclosure II

GAO-03-23 – *Endangered Species: Research Strategy and Long-Term Monitoring Needed for the Mojave Desert Tortoise Recovery Program*

(1) FWS should *develop and implement a coordinated research strategy* for the desert tortoise that would link land management decisions with research results.

Agency Actions

- Interior has taken a number of actions to coordinate research and land management decisions. In 2004, FWS created a Desert Tortoise Recovery Office (DTRO) that organizes regular meetings of the Desert Tortoise Management Oversight Group, which federal, state, and local land managers and researchers attend. Topics discussed at these meetings include the status of monitoring efforts, planned management actions, and recovery plan revision. The DTRO is supported by a Science Advisory Committee that advises the office and its cooperators on the overall scientific direction of the recovery effort, assesses the efficacy of monitoring, prioritizes research and research-based recovery actions, evaluates research results and recovery progress, and consults outside scientific experts, as necessary. In 2006, the U.S. Geological Survey issued a report that evaluated the effectiveness of recovery actions and made recommendations for additional science and monitoring, which the DTRO and its cooperators are working to implement. In addition, the revised draft recovery plan for the tortoise, which was issued in August 2008, also places a strong emphasis on coordinating research and management.

GAO Analysis

- This recommendation has been implemented.
- (2) FWS should *periodically reassess the desert tortoise recovery plan* to determine whether scientific information developed since its publication could alter implementation actions or allay some of the uncertainties about the plan's recommendations.

Agency Actions

- In 2003, FWS appointed a committee to carry out a scientific assessment of the desert tortoise recovery plan in advance of any renewal or revision of the plan. The committee reported their findings in October 2004. Primary findings were that the recovery plan was fundamentally strong, but that it could benefit substantially from revision in several areas. FWS issued a draft revised recovery plan in August 2008.

GAO Analysis

- This recommendation has been implemented.
- (3) The Secretary of the Interior should work with the Secretary of Defense and other agencies and organizations involved in tortoise recovery to *identify and assess options for securing continued funding for rangewide population monitoring*, such as developing memorandums of understanding between organizations.

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Agency Actions

- A number of federal and state land management agencies have signed a memorandum of agreement for conserving and enhancing the California deserts for current and future generations, including carrying out recovery actions for the desert tortoise. Signatories include the Bureau of Land Management (BLM), FWS, National Park Service, U.S. Forest Service, Bureau of Indian Affairs, U.S. Geological Survey, Army, Navy, Air Force, Marines, California state parks, California Department of Transportation, and three large California counties. These entities meet regularly to discuss impacts on the California desert and what resources and management actions are needed to address these impacts, including actions for desert tortoise recovery. In addition, the agencies on the Desert Tortoise Management Oversight Group are preparing to sign a charter for their group that will include a commitment to seek funding for monitoring.

GAO Analysis

- This recommendation has been implemented.

(4) FWS should *issue the annual expenditure reports as required by the law*, and advise Congress if reports are incomplete because not all agencies have provided the information requested.

Agency Actions

- FWS did not provide the reports for expenditures on endangered species in fiscal years 2005 and 2006 to Congress until December 2008. FWS has gathered data needed for the fiscal year 2007 report and expects to send it to Congress in early 2009. An FWS official attributed the delays primarily to delays in receiving information from several state agencies on their expenditures for endangered species. FWS is implementing a new process for collecting data from the states and is now working to complete the reports in a more timely fashion.

GAO Analysis

- This recommendation has not been implemented, but FWS has plans to do so.

Enclosure II

GAO-03-803 – *Endangered Species: Fish and Wildlife Service Uses Best Available Science to Make Listing Decisions, but Additional Guidance Needed for Critical Habitat Designations*

(1) FWS should provide clear strategic direction for the critical habitat program, within a specified time frame, by clarifying the role of critical habitat and how and when it should be designated, and recommending policy/guidance, regulatory, and/or legislative changes necessary to provide the greatest conservation benefit to threatened and endangered species in the most cost-effective manner.

Agency Actions

- In 1999, Interior published a notice in the *Federal Register* soliciting comments on its intention to develop guidance to clarify the role of critical habitat in conserving endangered species. This notice acknowledged the need for a more efficient and cost-effective process for designating critical habitat, because responding to critical habitat litigation had significantly delayed other service listing activities. FWS has drafted a critical habitat policy that is going through departmental review, and, in 2006, the service convened a team to provide recommendations to the Secretary of the Interior regarding changes to the regulations implementing the act. The draft critical habitat guidance is again being reviewed and revised by FWS to address a recent opinion from Interior's Office of the Solicitor and draft internal guidance on critical habitat exclusions. FWS does not expect the policy or regulations to be final until the spring of 2009 or later. Delays have been caused by higher-priority work; court decisions, including adverse rulings; and other policy decisions.

GAO Analysis

- This recommendation has not been implemented.

Enclosure II

GAO-03-976 – *Military Training: Implementation Strategy Needed to Increase Interagency Management for Endangered Species Affecting Training Ranges*

(1) The Secretaries of Defense, the Interior, and Agriculture should *jointly develop and implement an interagency strategy* that includes a systematic methodology to identify opportunities for cooperative management efforts, funding sources, science and technology sources, and goals and criteria to measure success.

Agency Actions

- The three departments signed an interagency action plan for endangered species management affecting Department of Defense (DOD) lands in 2005 that includes an interagency strategy with the elements described in our recommendation.

GAO Analysis

- This recommendation has been implemented.

(2) The Secretaries of Defense, the Interior, and Agriculture should *jointly develop a comprehensive training program* for federal land managers, to include senior executives, regional, and on-site staff to identify and implement opportunities for interagency cooperation.

Agency Actions

- The three departments established a joint working group and developed a plan to identify opportunities for cooperative management and training.
- DOD developed a Web-based system, Defense Environmental Network & Information Exchange, which contains a detailed calendar that provides users with information on upcoming events such as training courses, seminars, and conferences on environmental stewardship—including endangered species management—at DOD, other federal agencies, the private sector, and international sites.
- The U.S. Geological Survey manages a Web-based exchange called “The National Biological Information Infrastructure,” which allows land managers to share information within and across agencies and organizations. The data repository provides information on research and monitoring efforts as well as training conferences for land managers, researchers, and others.

GAO Analysis

- This recommendation has been implemented.

(3) The Secretaries of Defense, the Interior, and Agriculture should *jointly create a centralized or easily accessible source of information on cooperative management efforts* that includes elements such as lessons learned, best practices, and agency contacts for federal land managers.

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Agency Actions

- The departments established a joint working group and created the “Threatened and Endangered Species Document and Data Repository,” which allows federal land managers to share information within and across agencies and organizations on threatened and endangered species research and monitoring efforts as well as other species information.

GAO Analysis

- This recommendation has been implemented.

(4) Matter for Congressional Consideration - Congress may wish to consider requiring the Secretaries of Defense, the Interior, and Agriculture to *jointly report each year on their efforts to manage cooperatively for endangered species affecting military training ranges* and share the burden of land use restrictions.

Congressional Actions

- Rather than requiring annual reports, Congress has required reports on individual efforts to manage endangered species affecting military training ranges. For example, the 2004 National Defense Authorization Act directed the Secretary of Defense to establish a task force—made up of representatives from the military, state and federal wildlife agencies, and wildlife and environmental interest groups—to explore ways to resolve conflicts between training and species protection at the Barry M. Goldwater Range in Arizona. The act also required the Secretary of the Interior to prepare a report, in consultation with the Secretaries of Agriculture and Defense, on water-use management measures and conservation measures at Fort Huachuca, Arizona, and Sierra Vista subwatershed.

GAO Analysis

- This matter for congressional consideration has been implemented.

Enclosure II

GAO-04-93 – *Endangered Species: More Federal Management Attention Is Needed to Improve the Consultation Process*

(1) FWS and NMFS should work together with the action agencies we reviewed (and others the services may deem appropriate) to determine how best to capture the level of effort devoted to preconsultation in their data systems and ensure that such information is gathered, maintained, and used to manage the process effectively.

Agency Actions

- NMFS and FWS have determined that it is difficult to capture the level of effort in preconsultation, the sometimes lengthy discussions that occur before formal consultation with agencies. NMFS officials stated that it is difficult to discern how much work during preconsultation should be attributed to the ESA because preconsultation often includes discussion of other subjects, such as compliance with other federal, state, and local requirements. NMFS officials also stated that determining the level of effort was not a priority, given limited resources. FWS officials had similar concerns, although the agency has recently formed an oversight committee for its consultation tracking system and will consider tracking preconsultation activities.

GAO Analysis

- This recommendation has not been implemented, and it is unclear whether the agencies will do so for the reasons stated above. However, we recognize the difficulty that may be involved in tracking the time spent, and it appears that concerns about the time spent in preconsultation have lessened now that the agencies have more experience with the process.

(2) FWS, NMFS, the U.S. Army Corps of Engineers (Corps), the Bureau of Reclamation, BLM, and the U.S. Forest Service should work together to resolve disagreements about when consultation is needed and how detailed an analysis is necessary given a proposed activity's likely effects on species or habitat, and ensure that their agreements are disseminated quickly to all staff involved in consultations as well as to the public.

Agency Actions

- FWS, NMFS, BLM, and the Forest Service have continued to devote significant effort to supporting the use of "streamlining," a process in which interagency teams of biologists seek consensus on proposed actions before formal consultation. Officials at some of these agencies noted that most disagreements about when consultation is needed have been resolved using these interagency teams. The Corps issued guidance for compliance with consultation requirements that includes, among other things, clarification on when consultation is needed and when disagreements over projects should be brought to the attention of managers. An FWS official we spoke with said that disagreements or confusion about what is needed for consultation tends to subside over time as federal agencies get more experience with the process and as FWS and NMFS become more familiar with agency actions that need to go through consultation. Some officials also noted that disagreements become more likely as the types of actions that must be consulted on change or increase in complexity.

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- This recommendation has not been fully implemented. While we recognize that disagreements are somewhat inherent in the consultation process and will continue to arise, we found that disagreements persist among FWS, NMFS, and the Bureau of Reclamation over the definition of environmental baseline, particularly in the case of ongoing operations—an issue we discussed in our report—as well as with regard to the extent of federal discretion over certain activities. Some officials at these agencies asserted that such disagreements are inevitable, since agencies’ normal operations sometimes affect threatened or endangered species, but they believe that the agencies have sufficient processes in place to work through these disagreements. Furthermore, some agency officials believe that these cases need to be resolved on a case-by-case basis because of their uniqueness or complexity. However, other officials told us that additional policy and guidance on how to handle these issues would be helpful. The differences of opinion on this issue are an indication that the agencies either continue to have disagreements that could be resolved through additional policy or guidance, or that they need to better communicate to staff involved in consultations about how to handle these situations.

(3) The Secretaries of the Interior and Defense, the Under Secretary of Commerce for Oceans and Atmosphere, and the Chief of the Forest Service should work together to refine guidance, as needed, on the type and specificity of documentation required in consultations.

Agency Action

- NMFS, FWS, BLM, the Forest Service, and the Corps have taken a variety of steps to implement this recommendation, including issuing guidance documents, expanding training, and disseminating information on agency Web sites.

GAO Analysis

- This recommendation has been implemented.

(4) The Secretaries of the Interior and Defense, the Under Secretary of Commerce for Oceans and Atmosphere, and the Chief of the Forest Service should work together to evaluate efforts to improve the consultation process, such as programmatic consultations and streamlining, and use the results as a basis for future management actions.

Agency Actions

- NMFS and FWS, working with other agencies, have participated in various reviews of consultation improvement efforts. For example, a FWS/NMFS analysis of BLM and Forest Service projects done through an expedited consultation process for activities conducted under the National Fire Plan found that a significant percentage of projects did not meet the documentation criteria for describing the project area, the project, the species affected, and the likely effects. As a result, NMFS and FWS officials provided feedback to agency staff involved in the consultations about ways to improve the assessments. In addition, BLM and

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Forest Service officials increased their oversight and added guidance for these types of projects. The agencies have continued to expand their use of streamlining and programmatic actions to other types of federal actions and other areas of the country.

GAO Analysis

- This recommendation has been implemented.

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GAO-05-211 – Endangered Species: Fish and Wildlife Service Generally Focuses Recovery Funding on High-Priority Species, but Needs to Periodically Assess Its Funding Decisions

(1) FWS should periodically assess the extent to which it is following its recovery priority guidelines and identify how factors other than those in the guidelines are affecting its funding allocation decisions.

Agency Action

- FWS has made plans to assess recovery program funding periodically and identify factors other than priority number that may have influenced the level of funding certain species receive.

GAO Analysis

- This recommendation has not been implemented, but FWS has plans to do so.

(2) FWS should report the factors affecting species expenditures publicly, for example, in its biennial recovery reports to Congress.

Agency Action

- FWS has made plans to discuss factors that influence the level of funding certain species receive beginning in the 2008 Recovery Report to Congress, which the agency expects to issue by December 2009.

GAO Analysis

- This recommendation has not been implemented, but FWS has plans to do so.

Enclosure II

GAO-05-906 – Wind Power: Impacts on Wildlife and Government Responsibilities for Regulating Development and Protecting Wildlife

(1) The Director of FWS should develop consistent communication for state and local wind power regulators. This communication should alert regulators to (a) the potential wildlife impacts that can result from wind power development; (b) the various resources that are available to help them make decisions about permitting such facilities, including FWS state offices, states' natural resource agencies, and FWS's voluntary interim guidelines—and any subsequent revisions—on avoiding and minimizing wildlife impacts from wind turbines; and (c) any additional information that FWS deems appropriate.

Agency Actions

- FWS developed consistent communication about the potential wildlife impacts from wind power and the resources available to help regulators make decisions about permitting wind power and provided this communication through a number of conferences and meetings. For example, FWS cosponsored a regional conference in the Great Lakes area that addressed wildlife impacts of wind power development. The conference was, in part, targeted at and attended by state and local regulators. At the conference, federal agencies and other presenters provided information on the possible wildlife impacts of wind power development. At other conferences and meetings, FWS alerted regulators to the effects of wind development on wildlife by informing them about the availability of expert agency staff, such as migratory bird specialists in field offices.
- In response to requests from state agencies, FWS has assisted a number of states, including California, Colorado, New York, and Ohio, in developing guidelines for wind power.
- FWS is updating its interim voluntary wind turbine guidelines, which inform wind developers about how to address potential wildlife effects and are similarly useful for wind power regulators. A federal advisory committee, which includes representatives from two states, first met to address these guidelines in February 2008. FWS expects this to be a multiyear effort, with final guidelines to be completed around late 2010. After the guidelines become final, FWS will provide information about them in press releases, public workshops and conferences, symposia, and other forums.

GAO Analysis

- This recommendation has been implemented.

Enclosure II

GAO-06-463R – *Endangered Species: Time and Costs Required to Recover Species Are Largely Unknown*

(1) FWS and NMFS should implement their current recovery planning guidance when drafting or revising recovery plans so that recovery plans routinely estimate the overall time and cost to recover species and report this information in a single location (e.g., in the biennial recovery reports to Congress).

Agency Actions

- In 2006, NMFS issued a memorandum reiterating its guidance that estimates of the overall time and cost to recover species be included in all new recovery plans.
- In 2008, FWS issued a memorandum to its regional offices reiterating the need to routinely estimate the overall time and cost to recover species in all new and revised recovery plans. Estimating time and costs to recover species has been in FWS guidance since 1990.
- The *Report to Congress on the Recovery of Threatened and Endangered Species, Fiscal Years 2005-2006*, includes time and cost estimates for species for which recovery plans contain such estimates. However, because plans for the majority of listed species were not originally completed with time and cost estimates and have not been revised recently, most species in the report lack such estimates.

GAO Analysis

- This recommendation has been implemented.

(2) FWS and NMFS should include in recovery plan guidance direction that all new and revised recovery plans have either recovery criteria evidencing consideration for all five delisting factors or a statement regarding why it is not practicable to do so.

Agency Actions

- In 2006, NMFS revised its interim guidance and issued a memorandum directing that recovery plans include evidence that all five delisting factors were considered and state if a factor is not considered a threat to the species.
- In 2008, FWS issued a memorandum to its regional offices directing that recovery plans include evidence that all five delisting factors were considered and state if a factor is not considered a threat to the species.

GAO Analysis

- This recommendation has been implemented.

Enclosure II

GAO-07-35 – USDA Conservation Programs: Stakeholder Views on Participation and Coordination to Benefit Threatened and Endangered Species and Their Habitats

(1) The Chief of the Natural Resources Conservation Service (NRCS) and the Director of FWS should work with the Association of Fish and Wildlife Agencies (AFWA) to incorporate monitoring and reporting mechanisms in their memorandum of understanding prior to finalizing it for implementation.

Agency Action

- In 2007, NRCS and FWS signed a memorandum of understanding with AFWA that incorporated monitoring and reporting measures.

GAO Analysis

- This recommendation has been implemented.

(2) The Chief of NRCS, the Administrator of the Farm Service Agency (FSA), and the Director of FWS, in cooperation with AFWA, should include FSA as an additional partner to the memorandum of understanding or develop a separate memorandum to address coordination.

Agency Action

- FSA has agreed to become a signatory party to the 2007 memorandum of understanding between NRCS, FWS, and AFWA. NRCS, FWS and AFWA will work with FSA to incorporate within the memorandum of understanding the appropriate conservation activities and programs administered by FSA which benefit threatened and endangered species. The agencies plan to modify the current memorandum of understanding by September 2009.

GAO Analysis

- This recommendation has not been implemented, but the agencies have plans to do so.

Enclosure III

GAO Reports Discussing the Endangered Species Act, but Containing No Recommendations Regarding Its Implementation

U.S. Fish and Wildlife Service: Endangered Species Act Decision Making. [GAO-08-688T](#). Washington, D.C.: May 21, 2008.

Military Training: Compliance with Environmental Laws Affects Some Training Activities, but DOD Has Not Made a Sound Business Case for Additional Environmental Exemptions. [GAO-08-407](#). Washington, D.C.: March 7, 2008.

Endangered Species: Many Factors Affect the Length of Time to Recover Select Species. [GAO-06-730](#). Washington, D.C.: September 6, 2006.

Endangered Species Act: Successes and Challenges in Agency Collaboration and the Use of Scientific Information in the Decision Making Process. [GAO-05-732T](#). Washington, D.C.: May 19, 2005.

Protected Species: International Convention and U.S. Laws Protect Wildlife Differently. [GAO-04-964](#). Washington, D.C.: September 15, 2004.

Endangered Species: Despite Consultation Improvement Efforts in the Pacific Northwest, Concerns Persist about the Process. [GAO-03-949T](#). Washington, D.C.: June 25, 2003.

International Environment: U.S. Actions to Fulfill Commitments Under Five Key Agreements. [GAO-03-249](#). Washington, D.C.: January 29, 2003.

Transboundary Species: Potential Impact to Species. [GAO-03-211R](#). Washington, D.C.: October 31, 2002.

Columbia River Basin Salmon and Steelhead: Federal Agencies' Recovery Responsibilities, Expenditures and Actions. [GAO-02-612](#). Washington, D.C.: July 26, 2002.

International Environment: U.S. Actions to Fulfill Commitments Under Five Key Agreements. [GAO-02-960T](#). Washington, D.C.: July 24, 2002.

Canada Lynx Survey: Unauthorized Hair Samples Submitted for Analysis. [GAO-02-496T](#). Washington, D.C.: March 6, 2002.

Unauthorized Hair Samples Submitted for Analysis. [GAO-02-488R](#). Washington, D.C.: March 6, 2002.

Accidental Contamination of Samples Used in Canadian Lynx Study Rendered the Study's Preliminary Conclusion Invalid. [GAO-01-1018R](#). Washington, D.C.: August 14, 2001.

Enclosure III

Endangered Species Act: Fee-Based Mitigation Arrangements. [GAO-01-287R](#). Washington, D.C.: February 15, 2001.

Fish and Wildlife Service: Weaknesses in the Management of the Endangered Species Program Workload at the Carlsbad, California Field Office. [GAO/T-RCED-00-293](#). Washington, D.C.: September 14, 2000.

Army Corps of Engineers: An Assessment of the Draft Environmental Impact Statement of the Lower Snake River Dams. [GAO/RCED-00-186](#). Washington, D.C.: July 24, 2000.

Department of Commerce, National Oceanic and Atmospheric Administration: Endangered and Threatened Species; Threatened Status for Two Chinook Salmon Evolutionarily Significant Units (ESUs) in California. [GAO/OGC-00-5](#). Washington, D.C.: October 15, 1999.

Endangered Species: Caribou Recovery Program Has Achieved Modest Gains. [GAO/RCED-99-102](#). Washington, D.C.: May 13, 1999.

International Environment: Literature on the Effectiveness of International Environmental Agreements. [GAO/RCED-99-148](#). Washington, D.C.: May 1, 1999.

Department of Commerce, National Oceanic and Atmospheric Administration: Endangered and Threatened Species of Salmonids. [GAO/OGC-99-38](#). Washington, D.C.: April 7, 1999.

Water Resources: Corps of Engineers' Actions to Assist Salmon in the Columbia River Basin. [GAO/RCED-98-100](#). Washington, D.C.: April 27, 1998.

Comments from the Department of the Interior



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



DEC 16 2008

Ms. Robin Nazzaro
Director, Natural Resources and Environment
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Ms. Nazzaro:

We appreciate the opportunity to review and comment on the draft report, *Endangered Species Act: Many GAO Recommendations Have Been Implemented but Some Issues Remain Unresolved*, (GAO-09-225R).

Over the past 10 years, we have implemented most of GAO's recommendations made on various program areas of the Endangered Species Act. The enclosure provides updates to actions we have taken to meet the few recommendations that remain open.

We hope these comments will assist you in preparing the final report.

Sincerely,

Assistant Secretary for Fish
and Wildlife and Parks

Enclosure

Enclosure V

GAO Contact and Staff Acknowledgments

GAO Contact

Robin Nazzaro at (202) 512-3841 or nazzaror@gao.gov

Staff Acknowledgments

In addition to the individual named above, Richard P. Johnson, Trish McClure (Assistant Director), Benjamin Shouse, and Bruce Skud made key contributions to this report.

(360980)

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