

OVERVIEW OF THE ESA

**Alaska's Efforts to Reform the
Endangered Species Act – November 15, 2011**

**Jeff Leppo
Stoel Rives LLP
510 L Street, Suite 500
Anchorage, AK 99501**

The ESA Basics

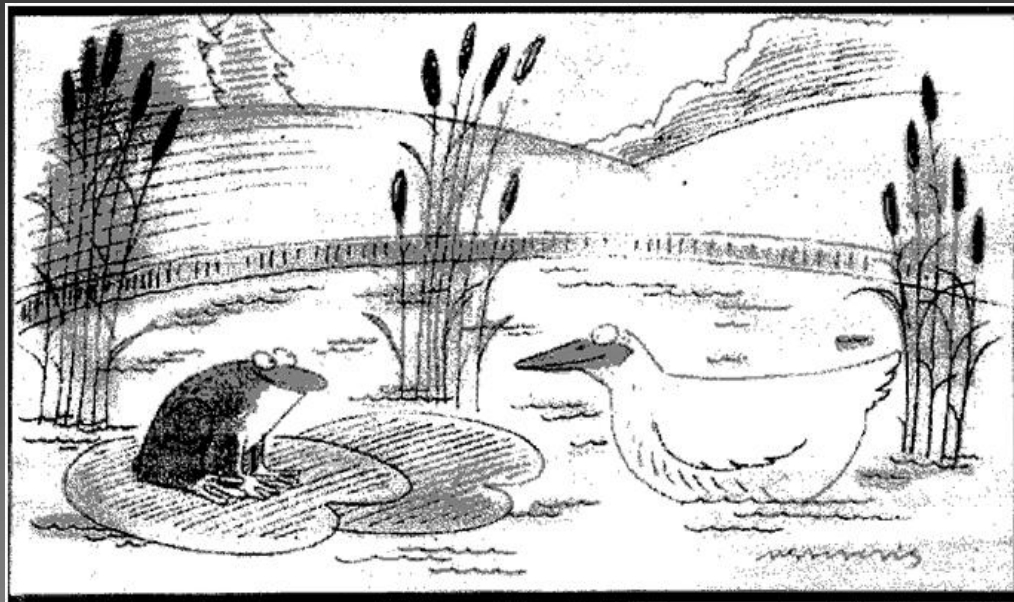
The ESA authorizes the Secretaries of Interior and Commerce to conserve fish, wildlife and plants facing extinction by:

- (1) listing species as threatened or endangered
- (2) designating critical habitat
- (3) enforcing the prohibition on take of listed species
- (4) Consulting to ensure that actions funded or authorized by federal agencies do not jeopardize listed species or adversely modify critical habitat

The ESA Basics

- Procedural and substantive requirements
- Implemented by U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (the “Services”)

ESA Listings



"My lawyer finally got me on the endangered-species list!"

ESA Listing

Identifying species for possible designation as endangered or threatened

- A citizen may petition the FWS or NMFS
- The Services may identify species through internal studies and discussions

Key Definition – Endangered Species

- Any species in danger of extinction throughout all or a significant portion of its range

Bowhead whale
(*Balaena mysticetus*)



Key Definition – Threatened Species

- Any species likely to become endangered in the foreseeable future



Spectacled Eider
(*Somateria fischeri*)

ESA Listing Process

- Use best available scientific and commercial information
- Use peer-review to ensure sound science and sound decision-making

ESA Listing Criteria

1. Present or threatened destruction, modification, or curtailment of species range or habitat
2. Over-use for commercial, recreational, scientific, or educational purposes
3. Disease or predation
4. Inadequacy of existing regulatory mechanisms
5. Other natural or man-made factors affecting continued existence of species

ESA Listing Steps

- Petition
- 90-day finding on Petition
- Species status review -12-month finding
- Proposed listing
- Final listing
- Designation of critical habitat
- Recovery plan

Key Definition - Take

- Includes harassing, harming, injuring or killing listed species
- Harm includes significant habitat alteration which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns

Take of Listed Species is Prohibited

- ESA take prohibitions immediately apply when species are listed as endangered
- ESA take prohibitions do not automatically apply to “threatened” species
- FWS has adopted a general 4(d) rule applying take prohibitions subject to species specific limitations
- NMFS adopts species specific 4(d) regulations that apply or limit application of the take prohibition

Prerequisite to ESA Take Authority

- Take authority under the ESA for listed marine mammals cannot be obtained without an MMPA take (negligible impact) authorization

Takings Exceptions

- Alaska Natives
 - for subsistence purposes
- Self Defense
 - actions to protect yourself or any human from bodily harm

Key Definition – Critical Habitat

- Specific geographic areas with physical and biological features essential to the conservation of a listed species and that may require special management

Critical Habitat

- Use best scientific data to identify areas essential to conservation of species, and that may require special management
- Economic impact analysis required; areas may be excluded from protection based upon that analysis and consideration of other relevant factors if benefits of exclusion outweigh benefits of designation
- Notice and public comment
- Designation does not create a park or preserve, but does complicate activities within the habitat area

Section 7 Consultation

- Purpose is to ensure that actions authorized, funded or carried out by federal agencies are not likely to jeopardize the continued existence of listed species, or to destroy or adversely modify critical habitat.

Key Definition – Jeopardy

- Jeopardizing the continued existence of a species means – to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species

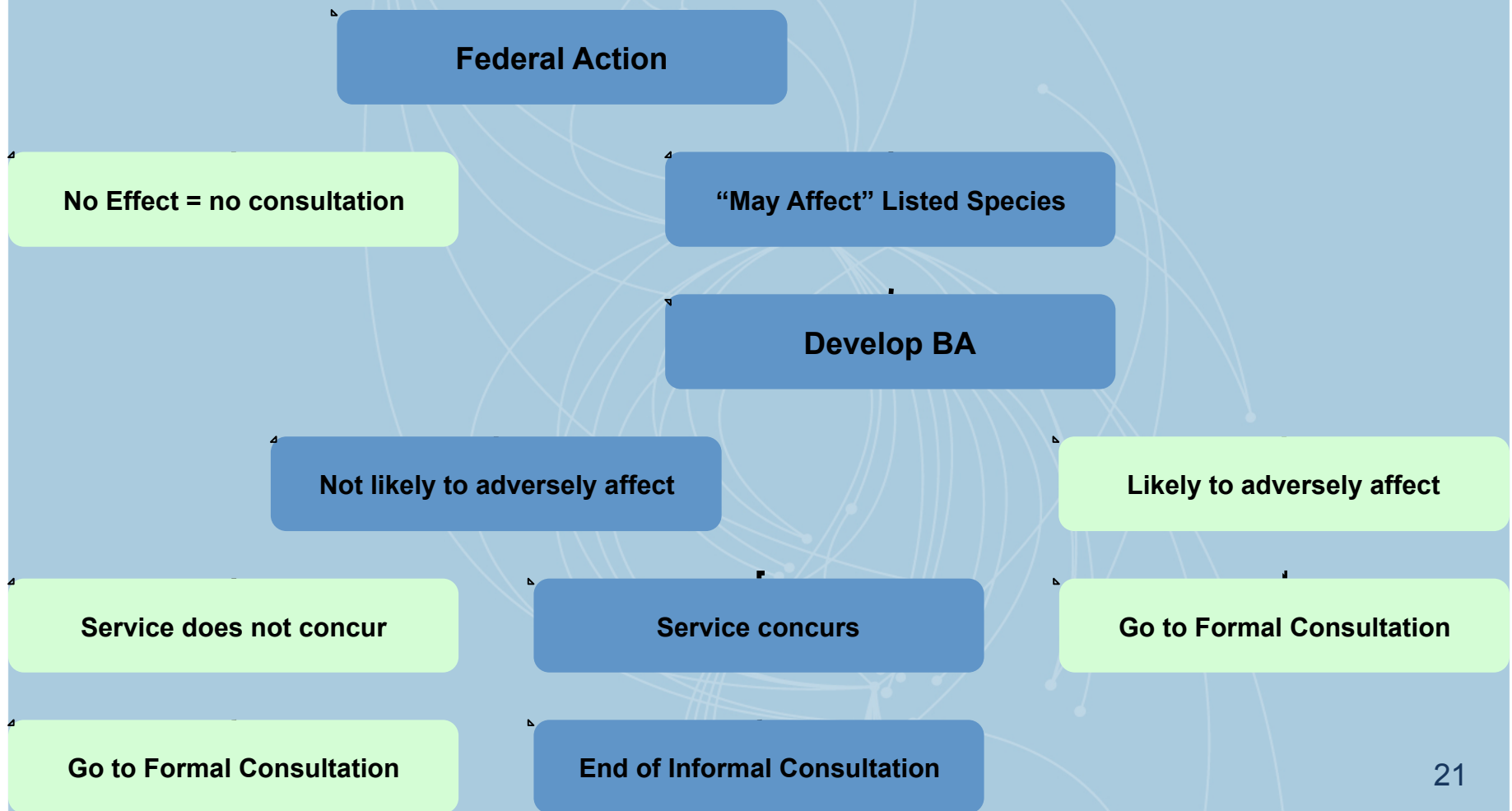
Key Definition – Adverse Modification

- Destruction or adverse modification of critical habitat means – a direct or indirect alteration that appreciably diminishes the value of the critical habitat for survival and recovery of a listed species

Section 7 Consultation

- If agency action may affect a listed species or critical habitat, the agency must initiate consultation with the Services
- Private entities are affected by Section 7 when their activities require federal permits or authorizations, or federal funding

Informal Consultation Summary



Informal Consultation

- No biological opinion
- No incidental take authorization
- Biological assessment/evaluation and Service's concurrence creates administrative record documenting that the action is not likely to adversely affect listed species or habitat

Formal Consultation

- Biological opinion evaluating the action
- Two possible outcomes
 1. No jeopardy opinion – federal action not likely to jeopardize species or adversely modify critical habitat
 - Issuance of *incidental take statement*
 - Imposition of *reasonable and prudent measures* to minimize take

Formal Consultation

2. Jeopardy Opinion – federal action likely to jeopardize species or to adversely modify critical habitat
 - Identifies *reasonable and prudent alternatives* that avoid jeopardy or adverse modifications

ESA Listings - Alaska

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- 8 marine mammals
 - Polar bear
 - Northern sea otter (DPS)
 - Steller sea lion (2 DPSs)
 - Bowhead whale
 - Fin whale
 - Humpback whale
 - Cook Inlet beluga whale (DPS)
- 4 birds
 - Short-tailed albatross
 - Spectacled eider
 - Steller's eider (DPS)
 - Eskimo curlew (extirpated)
- 1 terrestrial mammal
 - Canadian Lynx
- 1 plant
 - Aleutian shield fern
- Others (uncommon)
 - Leatherback sea turtle
 - Blue whale
 - North Pacific right whale
 - Sei whale
 - Loggerhead sea turtle
 - Green sea turtle
 - Sperm whale
- 3 candidate species
 - Pacific walrus
 - Kittlitz's murrelet
 - Yellow-billed loon
- 2 Proposed species
 - Ringed seal
 - Bearded seal