

New York State Wetlands Forum

US Fish and Wildlife Service Regulatory Update

Presented by Tim Sullivan

6 April, 2016



Topics to Cover

FWS Mitigation Policy

MBTA

BGEPA

ESA

Initiatives/Priorities

Revised FWS Mitigation Policy

- ❖ March 2016 proposed policy published in the FR
- ❖ Comments accepted until May 7
- ❖ Google: “FWS mitigation policy” or go to <http://www.regulations.gov>



Revised FWS Mitigation Policy

- ❖ How we got here
- ❖ Service's motivation and goals - updates 1981 policy
- ❖ Differences between 1981 and 2016 policies
 - ❖ Affirms hierarchy approach but now flexible
 - ❖ New landscape-scale emphasis – provide linkages
 - ❖ Now encompasses all FWS programs
 - ❖ Now incorporates adaptive management
 - ❖ 2016 policy Includes ESA which was previously omitted
 - ❖ Expands mitigation recommendations to non-trust resources
 - ❖ Now considers compensatory mitigation to be acceptable approach for ESA listed species
- ❖ Not retroactive but can be applied to projects under review at time of final rule



Revised FWS Mitigation Policy

GOALS

- ❖ Ensure consistency and transparency
- ❖ Obtain net conservation gain
- ❖ Be science based
- ❖ Have durability – financial assurances
- ❖ Be effective – occur before impact if possible
- ❖ Give preference to advanced mitigation based upon landscape scale
- ❖ Introduces habitat valuation – consider scarcity, suitability and importance
- ❖ Encourages the banking of habitat value
- ❖ FWS will develop policy, guidance documents and handbooks



Migratory Bird Treaty Act

- ❖ Over 1,000 species protected
- ❖ MBTA is a strict liability statute
- ❖ Currently no permit allowed for incidental take
- ❖ May 2015 FWS issues NOI on scope of PEIS



Proposed MBTA Incidental Take Permit

- ❖ Several approaches possible
 - ❖ General authorization
 - ❖ Individual permits
 - ❖ Memoranda of Understanding for federal agencies
 - ❖ Industry-specific voluntary guidance
- ❖ Compensatory mitigation options are under consideration for bird take
- ❖ More information available at BirdRegs.org



Bald and Golden Eagle Protection Act

- ❖ August 2015 US District Court reversed the 30 year permit – now 5 years
- ❖ February 2016 Proposed **revised** policy published in the FR
- ❖ FWS currently completing EIS



Improving ESA Implementation

- ❖ Focus on recovery
- ❖ Provide conservation incentives
- ❖ Increase public participation
- ❖ Ensure clear and consistent policies
- ❖ Base decisions on sound science
- ❖ Reduce the frequency and intensity of conflicts



Recent ESA Policy Revisions



- ❖ 50 CFR 402 – Incidental take statements final rule
- ❖ 50 CFR 424 – Implementing changes to the regulations for designating critical habitat
- ❖ Policy on exclusion from critical habitat
- ❖ 50 CFR 424.19 - Definition of destruction or adverse modification of critical habitat
- ❖ Policy regarding the role of state agencies in ESA activities



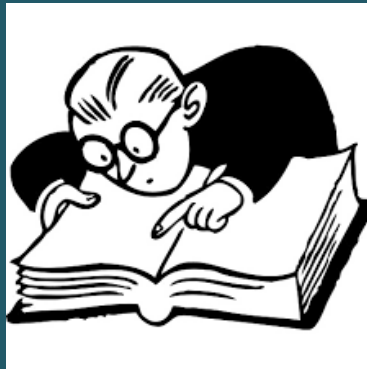
ESA Proposed Policy Revisions

- ❖ Policy regarding criteria for prioritizing listing actions
- ❖ Revised petition regulations
- ❖ Compensatory Mitigation Policy – proposed policy....coming soon



Previous ESA Policy Revisions

- ❖ Voluntary prelisting conservation actions - 2014
- ❖ Economic impact analysis of critical habitat – 2013
- ❖ See: [www.fws.gov/endangered/improving_ESA /](http://www.fws.gov/endangered/improving_ESA/)



ESA Litigation



- ❖ Dunes sagebrush lizard
- ❖ March 2016 2nd Circuit Court of Appeals decision found that FWS can use conservation agreements to forgo listing a species based upon conservation agreements
- ❖ Court gave deference to FWS judgment
- ❖ Highlights the importance of partnerships and voluntary agreements to protect suitable habitat

ESA Listing Proposals

- Eastern massasauga rattlesnake – proposed threatened
- Multiple positive 90-day Findings
 - Blandings, wood and spotted turtles
 - Rusty patched bumble bee
 - Bog buckmoth
 - Bicknell's thrush
 - Eastern hellbender
 - Black rail
 - Longhead darter
- 71 species currently nationwide
- See www.fws.gov/endangered/improving_ESA/listing



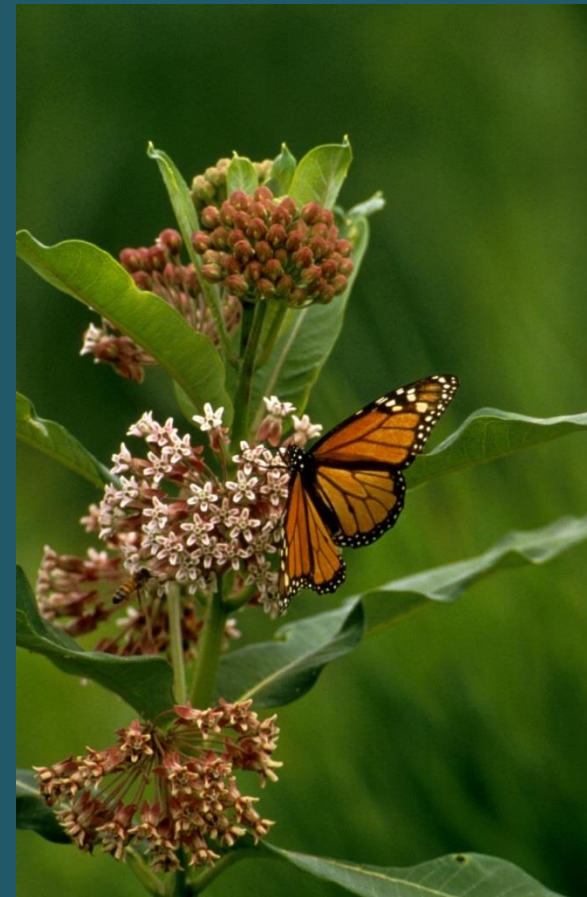


ESA Overview

- ❖ 40-year history, the ESA has prevented the probable extinction of hundreds of species
- ❖ 27 species successfully recovered and delisted
 - 13 species under Obama Administration
- ❖ 22 species downlisted from endangered to threatened
 - 7 species under Obama Administration
- ❖ Constantly working to improve ESA Implementation

FWS Priorities/Initiatives

- Priority Species
 - Monarch butterfly initiative
 - Lesser prairie chicken
 - Sage grouse
- Urban refuges/connecting people with nature
- Revised habitat conservation plan handbook
- Improve peer review
- Improve information disclosure
- Strategic habitat conservation
- Address climate change
- New best practices document for reducing avian collisions with buildings



Questions?



NYFO Priorities

- Species Recovery
- Energy
- Strategic Habitat Conservation
- Climate Change

