

STATUS REPORT ON KIRTLAND'S WARBLER PLANNING
ENDANGERED SPECIES ACT OF 1973 (PL. 93-205)

In brief summary, the basic provisions of the Act are as follows:

- (1) Provides for two categories of species listing - endangered and threatened.
 - a. endangered species - any species which is in danger of extinction throughout all or a significant portion of it's range.
 - b. threatened species - any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of it's range.
- (2) Provides for acquisition of critical habitat through Land and Water Conservation Funds.
- (3) Provides for State cooperation and participation in the endangered species program through cooperative agreements, grants-in-aid funding, and other incentives.
- * (4) Calls for participation where appropriate by all federal agencies and directs that no federal funds can be utilized for an activity that would be detrimental to an endangered species.

Most of the Forest Service responsibilities fall under Section 7 of the Act, dealing with interagency cooperation. The major Forest Service obligations under Section 7 follow:

- (1) Utilize our authority to carry out conservation programs for listed species.
- (2) Insure that our activities or programs do not jeopardize the continued existence of a listed species.
- (3) Insure that our activities or programs do not result in the destruction or adverse modification of critical habitat.
- (4) Insure that emphasis on habitat protection for endangered and threatened species be considered number one priority.

Consultation

Under Section 7 of the Act, the Forest Service must go into consultation with the USFWS if we identify an activity or program that will affect (positively or negatively) the listed species or it's habitat. The Forest Service is responsible for conducting a competent review of each program or activity which it funds, aughorizes, or carries out for determining whether it may affect a listed species. If in doubt on the issue of "may affect", we are to initiate consultation! This request should be issued to the Regional Director of the USFWS region involved. Authority to request consultation is retained by the Regional Forester but may be delegated to the Forest Supervisor.

The Regional Director of the USFWS can also call for consultation if he identifies any activity or program of a federal agency that has not received prior consultation and that may affect listed species or their habitat.

Informal consultation can also be utilized at the field level between the USFWS and USFS personnel but is supplemental to, not a substitute for, the formal consultation process.

Upon completion of formal consultation, a biological opinion will be issued by the Director of USFWS. This opinion represents the Government's position on the action relevant to enforcement of the Endangered Species Act. If the biological opinion concludes that the activity or program consulted upon is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat, four alternative courses of action are possible by the Forest Service (or any other federal agency).

- (1) Halt the action:
- (2) Defer the action pending some anticipated change in the situation or the status of the species which might permit continuing with the activity or program;
- (3) Modify the action as recommended or as otherwise compatible with conservation of the species; or
- (4) Proceed in spite of the adverse opinion. This alternative is not recommended. Proceeding contrary to the biological opinion incurs the strong probability of a lawsuit. Only the Chief, Regional Foresters, Station Directors, and Area Directors may approve a decision to override an unfavorable biological opinion (and then only under very specific conditions).

4

Procedure No. 1
CONSULTATION PROCEDURES FOR CONSTRUCTION PROJECTS
after November 10, 1978

Federal agency may choose to informally consult and exchange information with FWS Area Manager concerning Federal action or non-Federal action requiring Federal approval.

Agency requests from Regional Director, FWS, identification of listed or proposed threatened or endangered species which may be in project area.

Regional Director responds with list: maximum 30 days, but usually within 10 days.

Agency conducts biological assessment on all listed or proposed species within 180 days, unless mutual agreement for delay. Agency determines:

May affect

No effect

Biological assessment report with cover letter to Regional Director requesting initiation of consultation on listed species only (FWS cannot formally consult on proposed species).

Biological assessment report with cover letter to Regional Director indicating no consultation necessary.

Process Terminated

Consultation initiated on receipt of request (or response) from agency. FWS reviews biological assessment and other available data and renders biological opinion normally within 90 days after receipt of request.

Regional Director may still choose to request consultation with agency if deemed necessary.

Agency responds to request by Regional Director.

Biological opinion gives summary of data used in opinion and indicates:

1. Action will promote conservation of listed species or critical habitat.

Agency will determine final course of action in accordance with its Endangered Species Act obligations.

OR

2. Action is not likely to jeopardize listed species or destroy or adversely modify critical habitat.

OR

3. Action will likely jeopardize listed species or destroy or adversely modify critical habitat.

Biological opinion will also suggest feasible alternative actions, if any.

OR

4. Insufficient information to make one of 3 conclusions above. Regional Director notifies agency; mutually agree on time extension needed to complete consultation.

Biological opinion provided in accordance with 1, 2, or 3 above.

