

24.01.01.W1.12AR

**Federal and State Threatened and
Endangered Species**



Approved August 15, 2010

Current Revision October 4, 2023

Next Scheduled Review October 4, 2028

Procedure Summary

Environmental Health and Safety at WTAMU is composed of two distinct but integrated environmental safety departments that report to the Vice President of Research and Compliance. Academic and Research Environmental Health and Safety (AR-EHS) is responsible for research and academic related compliance, which includes laboratory and academic research and the associated compliance committees. Fire and Life Safety (FLS-EHS) is responsible for fire related compliance and conducts fire and life safety inspections of campus buildings and assists with the testing of all fire detection and suppression systems.

Supplements [TAMUS Regulation 24.01.01](#)

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1. Purpose

To establish a policy for West Texas A&M University (WTAMU) to meet the requirements and procedures of the Endangered Species Act (ESA) of 1973.

2. Scope

This procedure applies to all organizations at WTAMU. This procedure includes projects both on and off campus.

3. Procedure

3.1 Overview

The Endangered Species Act (ESA) of 1973 protects plants and animals that are listed by the federal government as "endangered" or "threatened." Two sections, § 7 and § 9, are central.

ESA § 9 makes it unlawful for anyone to "take" a listed animal, and this includes significantly modifying its habitat. This applies to private parties and private land; a landowner is not allowed to harm an endangered animal or its habitat on his property.

Section 7 does not apply to private parties but to federal agencies, but it covers their issuing permits for private activities, such as § 404 permits issued by the Corps of Engineers to people who want to do construction work in waters or wetlands. Specifically, § 7 imposes an affirmative duty on federal agencies to ensure that their actions (including permitting) are not likely to jeopardize the continued existence of a listed species (plant or animal) or result in the destruction or modification of critical habitat. *In effect, any action, which requires a Federal permit, is affected by the ESA.*

The ESA protects only plants and animals that have been officially listed as "endangered" or "threatened." The procedures for listing a species are in § 4 of the ESA, 16 U.S.C. § 1533, and the regulations in 50 C.F.R. Part 424. The actual lists are in 50 C.F.R. Part 17.

Congress refined these definitions into five criteria, any one of which will justify listing: impacts to the species' habitat or range; overuse of the species by humans; disease or predators; inadequacy of existing legal protections; or "other natural or man-made factors" affecting the species' continued existence. 16 U.S.C. § 1533(a)(1). More detailed criteria for listing are in 50 C.F.R. § 424.14(b)(2). Importantly, the decision to list is made "without reference to possible economic or other impacts of such determination." 50 C.F.R. § 424.11(b). It is made solely on biological grounds, without consideration of economic or other issues.

When the agency determines that a species is endangered or threatened, it is also supposed to designate the species' "critical habitat" U.S.C. § 1533(a)(3)). Critical habitat includes the areas within the geographic area occupied by the species on which are found physical or biological features "essential to the conservation of the species" and which may require special management considerations or protection. It also includes other specific areas, not presently occupied by the species that are essential for its conservation; this means that a person's land might be designated critical habitat for an endangered kangaroo rat even if no such rat had ever been found on the property. The agency must use the "best scientific data available" to designate critical habitat (id. § 1533(b)(2)), but the economic impact must also be considered; an area can be excluded from "critical habitat" on a cost-benefit basis, unless excluding it

would "result in the extinction of the species." Nevertheless, the Services often decline to examine economic impact when they designate critical habitat because, they argue, the impacts of critical habitat designation over and above the impacts of the listing itself are only minimal.

ESA § 9 prohibits everyone, private persons and federal agencies alike, from "taking" endangered wildlife. The regulations extend this to threatened animals (see e.g., 50 C.F.R. §§ 17.31, 17.21). "Take" includes "harming" listed species, and "harm" is defined by FWS regulation to include habitat alteration.

In full, the statutory definition of "take" includes "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (ESA § 3(18)). See also 15 C.F.R. § 922.3, for marine animals, and 50 C.F.R. § 17.3, which defines "harass" as acts or omissions, whether intentional or negligent, that annoy wildlife so as to "significantly affect behavioral patterns."

Harm in the definition of "take" in the Act means an action that actually kills or injures wildlife. Such action may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impacting essential behavioral patterns, including breeding, feeding, or sheltering.

3.2 WTAMU Procedure

All WTAMU employees and organizations will use the following rules as a guideline for the ESA:

- Prior to the experiment, field project, survey or other activity, determine if the activity has a potential to "take" an animal or species. If the answer is no, then no further action is required. If the answer is yes, then
 - Review the list of the potential endangered or threatened species of concern in the area where the activity will take place. Such a list should be obtained from EHS, a regional Fish and Wildlife office, state or local conservation agency, or other official source.
 - Contact WTAMU Environmental Health and Safety (EHS) for assistance.
- Determine if the activity could reasonably "take" a threatened or endangered species. If the answer is no, document the findings and the activity may continue. If the answer is yes, then consult with WTAMU AR-EHS.
- Specimen Collections: there is a potential that a specimen, collected prior to listing and residing in the WTMU collections, could become listed as threatened or endangered. If such a specimen is identified AR-EHS is to be notified immediately. AR-EHS will assist the collections manager/researcher in preparing the appropriate documentation and labeling of the specimen.

4. Record Retention

No official state records may be destroyed without permission from the Texas State Library as outlined in [Texas Government Code, Section 441.187](#) and [13 Texas Administrative Code, Title 13, Part 1, Chapter 6, Subchapter A, Rule 6.7](#). The Texas State Library certifies Agency retention schedules as a means of granting permission to destroy official state records.

West Texas A&M University Records Retention Schedule is certified by the Texas State Library and Archives Commission. West Texas A&M University Environmental Health and Safety will follow [Texas A&M University Records Retention Schedule](#) as stated in the Standard Operating Procedure [61.99.01.W0.01 Records](#)

Management. All official state records (paper, microform, electronic, or any other media) must be retained for the minimum period designated.

5. Training

West Texas A&M University Environmental Health and Safety will follow the Texas A&M University System Policy [33.05.02 Required Employee Training](#). Staff and faculty whose required training is delinquent more than 60 days will have their internet access terminated until all trainings are completed. Only Blackboard and Single Sign-on will be accessible. Internet access will be restored once training has been completed. Student workers whose required training is delinquent more than 30 days will need to be terminated by their manager through Student Employment.

6. Governing Documents

- Pub. L. 93-205, 87 Stat. 884, 16 U.S.C. § 1531 – 1534, Endangered Species Act.
- 50 CFR Subchapter B; TAKING, POSSESSION, TRANSPORTATION, SALE, PURCHASE, BARTER, EXPORTATION, AND IMPORTATION OF WILDLIFE AND PLANTS

7. Definitions

Code of Federal Regulations (CFR): The Code of Federal Regulations (CFR) is a codification of general and permanent rules (regulations) that have been previously published in the Federal Register. The CFR, which is compiled by the Office of the *Federal Register*, is divided into 50 titles, which cover broad areas subject to Federal regulation.

Endangered Species: An endangered species is one that is "in danger of extinction" throughout all or a significant portion of its range. The actual lists are in 50 C.F.R. Part 17.

Endangered Species Act (ESA): provided for the conservation of ecosystems upon which threatened and endangered species of fish, wildlife, and plants depend, both through Federal action and by encouraging the establishment of State programs. The Act:

- Authorizes the determination and listing of species as endangered and threatened.
- Prohibits unauthorized taking, possession, sale, and transport of endangered species.
- Provides authority to acquire land for the conservation of listed species, using land and water conservation funds.
- Authorizes establishment of cooperative agreements and grants-in-aid to states that establish and maintain active and adequate programs for endangered and threatened wildlife and plants.
- Authorizes the assessment of civil and criminal penalties for violating the Act or regulations.
- Authorizes the payment of rewards to anyone furnishing information leading to arrest and conviction for any violation of the Act or any regulation issued thereunder.

Environmental Protection Agency (EPA): its mission is to protect human health and to safeguard the natural environment — air, water, and land — upon which life depends.

FWS: U.S. Fish and Wildlife Service

Harass: acts or omissions, whether intentional or negligent, that annoy wildlife so as to "significantly affect behavioral patterns."

Harm: act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impacting essential behavioral patterns, including breeding, feeding, or sheltering.

Take: includes "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct"

Threatened Species: A "threatened" species is one that is "likely to become endangered" within the foreseeable future. The actual lists are in 50 C.F.R. Part 17.

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