

## Overview of the Endangered Species Act

Platte River Recovery Implementation Program  
Proposed First Increment Extension  
Environmental Assessment

### Introduction

The purposes of the Endangered Species Act (ESA) are to provide a means for conserving the ecosystems that endangered and threatened species depend on and a program for conserving such species.

The ESA directs all federal agencies to participate in conserving these species. Specifically, Section 7 (a)(1) of the ESA charges federal agencies to aid in the conservation of listed species. Also, Section 7 (a)(2) requires the agencies to ensure that their activities are not likely to jeopardize the continued existence of listed species or adversely modify designated critical habitats.

### The Consultation Process

The Endangered Species Program of the United States Fish and Wildlife Service (Service) uses Section 7 tools in partnership with other Service programs and other federal agencies. Their goals are to collaborate on solving conservation challenges and to create opportunities, using Section 7 consultations, to recover the ecosystems of listed species. Consultations also provide ways to implement recovery tasks by addressing threats to listed species that may result from federal agency programs and activities.

The provision under Section 7 that is most often associated with the Service and other federal agencies is section 7(a)(2). It requires federal agencies to consult with the Service to ensure that actions they fund, authorize, permit, or otherwise carry out will not jeopardize the continued existence

of any listed species or adversely modify designated critical habitats.

### Starting the Informal Consultation Process

Before initiating an action, the federal agency or its non-federal permit applicant should coordinate with the Service as to the species that may be within their action area. If a listed species is present, the federal agency must determine whether the project may affect it. If so, consultation may be required.

This determination is made in a biological assessment that is submitted to the Service for review. If the action agency determines (and the Service agrees) that the project is not likely to adversely affect a listed species or designated critical habitat, and the Service concurs in writing, then the consultation is concluded.

### The Formal Consultation Process

If the federal agency determines that a project is likely to adversely affect a listed species or designated critical habitat, it begins formal consultation. It does this by providing information on the nature of the anticipated effects.

The analysis of whether or not the proposed action is likely to jeopardize the continued existence of the species or to adversely modify designated critical habitat is contained in a biological opinion. The ESA requires that consultation be completed within 135 days; with a draft biological opinion being issued within 90 days; the regulations allow an additional 45 days for the Service to finalize the biological



opinion, ending consultation. If a jeopardy or adverse modification determination is made, the biological opinion must identify any reasonable and prudent alternatives that could allow the project to move forward.

The Service must anticipate any incidental take that may result from the proposed project (“take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any threatened or endangered species). Provided that such take would not jeopardize the continued existence of the listed species, it must authorize that take in an incidental take statement. This contains clear terms and conditions designed to reduce the impact of the anticipated take on the species involved.

The authorization of incidental take depends on the federal agency carrying out the terms and conditions. If the Service issues either a jeopardy opinion or an adverse modification of critical habitat opinion that

contains reasonable and prudent alternatives, it may also include an incidental take statement.

### Consultation for this Project

For this project, the draft environmental assessment will also serve as the biological assessment, which starts the consultation process with the Service. A primary focus of the Platte River Recovery Implementation Program is enhancing, restoring, and protecting habitat lands for the following listed threatened or endangered species:

- Whooping crane (endangered)
- Least tern (endangered)
- Piping plover (threatened)
- Pallid sturgeon (endangered)

These species will be the focus of consultation between Reclamation and the Service for the Proposed First Increment Extension.

