

Background



ESA Implementation: Background



Red-cockaded Woodpecker



Cyanea superba



Gopher Tortoise
Photo Courtesy of USFWS

Background



Objectives

- Understand how and why the Endangered Species Act (ESA) and certain parts of the Act came into being
- Understand Congress' intent
- Become familiar with the structure and language of the statute
- Know which sections you need to refer to for different reasons



Background



- Full text at U.S. Code Title 16, Chapter 35, sections 1531-1544
- Amended in 1978, 1982, 1988, and 2004
- <http://www.fws.gov/endangered/laws-policies/esa-history.html>





Background

National Defense Authorization Act

- FY2004 (Public Law 108-136):
 - Section 4(a)(3)(B)(i) – Integrated Natural Resources Management Plans (INRMPs)
 - Section 4(b)(2) – National Security Impact





Background

Sections of the Act

- Section 3 (Definitions)
- Section 4 (Listing and Recovery)
- Section 7 (Interagency Cooperation)
- Section 9 (Prohibitions)
- Section 10 (Exceptions)
- Section 17 (Relation to the Marine Mammal Protection Act (MMPA))



<http://www.fws.gov/endangered/laws-policies/regulations-and-policies.html>



Background

Implementing Regulations

- 50 CFR – Wildlife and Fisheries
- Regulations for:
 - MMPA
 - [Section 7 – 50 CFR § 402.01 - § 402.16]
 - ESA
 - Magnuson-Stevens Fisheries and Conservation Management Act



Background



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| Title | Volume | Chapter | Browse Parts | Regulatory Entity |
|------------------------------------|--------|-------------------------|--|---|
| Title 50 Wildlife and Fisheries | 1 | I | 1-16 | United States Fish and Wildlife Service, Department of the Interior |
| | 2 | | 17.1-17.95(b) | |
| | 3 | | 17.95(c)-end | |
| | 4 | | 17.96-17.99(h) | |
| | 5 | | 17.99(i)-end and 17.100-end | |
| | 6 | | 18-199 | |
| | 7 | II | 200-299 | National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce |
| | | III | 300-399 | International Fishing and Related Activities |
| | | IV | 400-499 | Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations |
| | V | 500-599 | Marine Mammal Commission | |
| 8 | VI | 600-659 | Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce | |
| 9 | | 660-end | | |

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Background



Interagency Cooperation Regulations

Subpart A--GENERAL

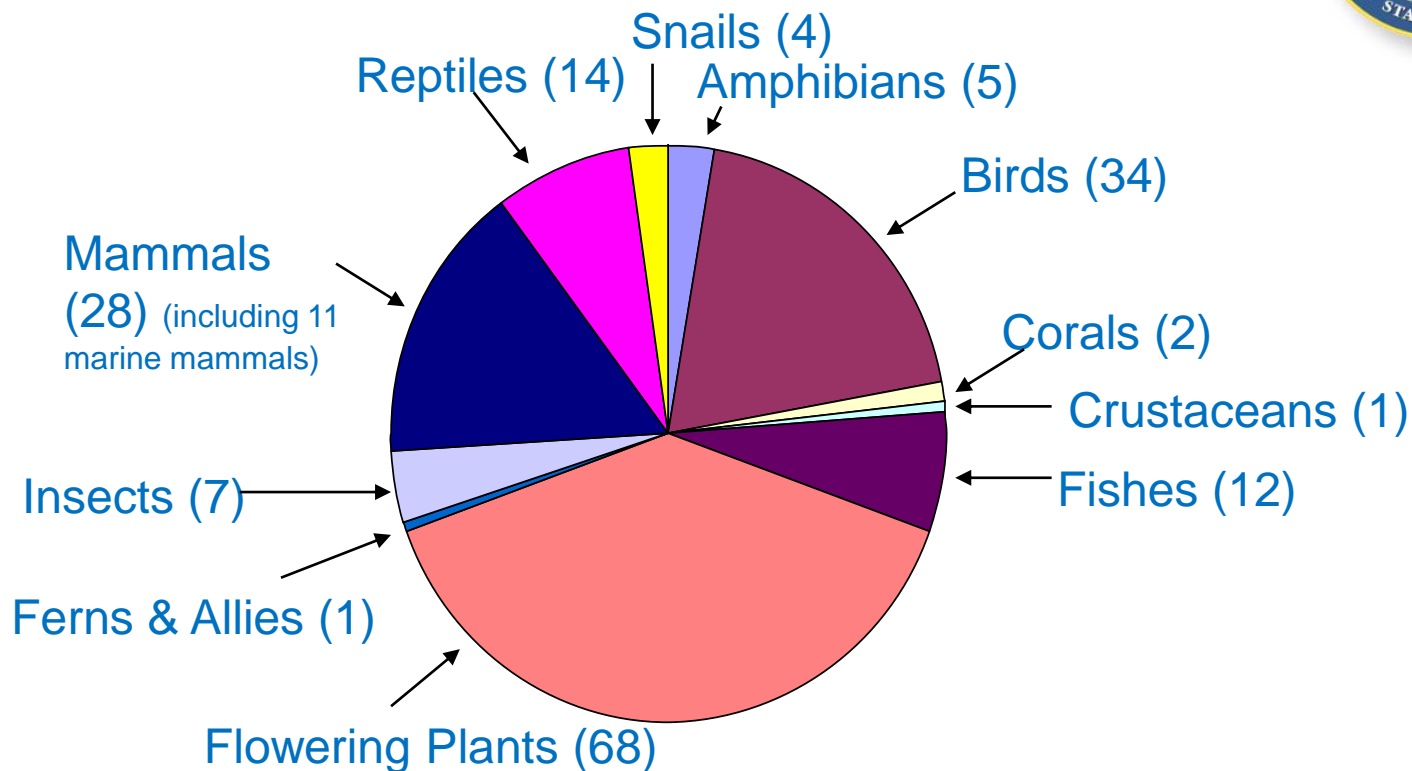
| | |
|--------------------------------|--|
| <u>§402.01</u> | Scope. |
| <u>§402.02</u> | Definitions. |
| <u>§402.03</u> | Applicability. |
| <u>§402.04</u> | Counterpart regulations. |
| <u>§402.05</u> | Emergencies. |
| <u>§402.06</u> | Coordination with other environmental reviews. |
| <u>§402.07</u> | Designation of lead agency. |
| <u>§402.08</u> | Designation of non-Federal representative. |
| <u>§402.09</u> | Irreversible or irretrievable commitment of resources. |

Subpart B--CONSULTATION PROCEDURES

| | |
|--------------------------------|--|
| <u>§402.10</u> | Conference on proposed species or proposed critical habitat. |
| <u>§402.11</u> | Early consultation. |
| <u>§402.12</u> | Biological assessments. |
| <u>§402.13</u> | Informal consultation. |
| <u>§402.14</u> | Formal consultation. |
| <u>§402.15</u> | Responsibilities of Federal agency following issuance of a biological opinion. |
| <u>§402.16</u> | Reinitiation of formal consultation. |



T&E Species



There are 177 Threatened and Endangered Species known to, or potentially occur on Navy installations and in Navy operational areas (i.e., at sea test and training ranges).

Background



BACK UP SLIDES



Background



Historical Context - Purposes

- ES Preservation Act 1966:
 - Listed native fish and wildlife, and limited means of protection
 - Directed Federal land-holding agencies to protect ES
 - Authorized land acquisition for the protection of ES
- ES Conservation Act 1969:
 - Provided additional protection to herps and invertebrates
 - Listed foreign species
- ESA 1973:
 - Prioritized conservation of ecosystems, programs for the conservation of species, and the upholding of conventions and treaties



Background

Historical Context - Policies

- ES Preservation Act 1966 Sec 1(b):
 - “It is further declared to be the policy of Congress that **the Secretary of Interior, the Secretary of Agriculture, and the Secretary of Defense, ...shall seek to protect species of native fish and wildlife, including migratory birds, that are threatened with extinction, and insofar as is practicable and consistent with the primary purposes...shall** preserve the habitats of such threatened species on lands under their jurisdiction”
- ES Act 1973 Sec 2(c):
 - “It is further declared to be the policy of Congress that **all Federal** departments and agencies shall seek to conserve endangered species and threatened species and **shall utilize their authorities in furtherance of the purposes of this Act**”