Introduction
The Endangered Species Act was enacted in 1973 to recover species in decline and conserve the ecosystems where they live. The federal process of protecting species and their habitat sometimes appears to conflict with private property rights. Much of the conflict arises because of our lack of understanding of this law and the details of each section, especially as it pertains to private property. This fact sheet will briefly explain the major concepts and terminology of the Endangered Species Act, and thus increase our ability to understand the activities of the U.S. Fish and Wildlife Service.

History of the ESA
The Endangered Species Act (ESA) was, in fact, the 3rd act of Congress to address species’ extinction. Earlier acts, in 1966 and 1969, were deemed ineffective in creating a process to identify species and their key habitats (Sullins, 2001). Each of these acts were created in response to the dramatic number of wildlife, fish, and plant species that were experiencing population declines or extinction. Of particular concern were whooping cranes (Grus americana), key deer (Odocoileus virginianus clavium), and many whale species. For example, as early as 1938 there were only 15 adult whooping cranes alive in the wild; in 1955 there were only 25 key deer alive in the wild. Despite the extensive detail put forth in the document, many of the statutes of the ESA were created when suits were determined in court. Thus, they may reflect the philosophy toward wildlife that was present at the time of that court decision (Sanford, 2001).

Candidate, Threatened, Endangered Species
Section 4 of the ESA is considered the core of the act. In this section the listing process is outlined, and the status of species is defined. Any interested person or group can submit a petition for a species to be listed. How a species is classified is determined by three criteria: 1) the magnitude of the threat to the species, 2) the immediacy of the treat, and 3) the taxonomic distinctness of the species (e.g., is it a species or a subspecies) (Sullins, 2001).

An endangered species is one that is in danger of extinction throughout all or most of its range. A threatened species is one that is likely to become endangered in the foreseeable future throughout all or a significant part of its range unless actions are taken. A candidate species is one in which populations are in decline throughout its distribution
and has been petition for consideration official listing under the ESA. Regularly, the list of candidate species is reviewed to determine if the species is indeed threatened or endangered. Additionally, the list of protected species is also regularly reviewed to determine if a species should be “de-listed” and removed from protection by the ESA or “down-listed” from endangered to threatened.

Once a species is listed as endangered or threatened, the U.S. Fish and Wildlife Service is tasked with determining critical habitat; many state and federal agencies assist with this determination. Critical habitat is the area of land containing features that are essential to the species and those areas that might require special management (Sullins, 2001). Some of the needs that are considered are: food, water, air, cover and shelter, sites for breeding and rearing offspring, and the amount of space needed for an individual. Once critical habitat is determined, Section 4 mandates that the U.S. Fish and Wildlife Service create and implement a recovery plan for that species.

**Experimental Populations**
Relocating endangered animals into an area where they don’t already exist can cause severe opposition from local landowners. Once the species is established in the area, the full extent of the law is enforced on that species, which may introduce land management restrictions, including private land management. To alleviate this pressure on the local landowners, Congress created more flexible restrictions for these relocated species, considered “experimental populations” (Sullins, 2001). In essence, experimental populations are given more latitude in management, similar to those species that are considered “threatened” rather than “endangered,” which affords local federal and state agencies the opportunity to tailor conservation restrictions to their situation. A popular example is the gray wolf population in Yellowstone National Park, considered an “experimental non-essential population.” Because of this status, the U.S. Fish and Wildlife Service was able to work with the local public, state managers, and the National Park to determine conservation and management strategy unique to that population, including removal of problem animals (DOI, 1994).

**Section 7 – Federal Requirements**
Many of us may have heard of a Section 7 permit. Section 7 of the ESA requires that federal agencies, or private entities that are working with federal agencies, cooperate with the Secretaries of Interior and Commerce to carry out activities that conserve the species on the Endangered Species List and to avoid harm to these species. Furthermore, Section 7 requires each federal agency, including any party within the federal nexus (e.g., private landowner receiving federal funds) to consult with U.S. Fish and Wildlife Service to insure that any activity carried out is not likely to jeopardize an endangered or threatened species (Sanford, 2001).

**Section 9 – Prohibited Actions**
Section 9 of the ESA details the activities that are prohibited for state, federal and local governments, and private landowners. In general, the following activities are illegal and can result in prosecution (Sullins, 2001):
• Importing or exporting *endangered* species
• “Taking” any *endangered* species within the U.S., its territories, territorial seas, and the high seas
• Possessing, selling, delivering, carrying, etc., any *endangered* species that has been unlawfully taken, in the course of any commercial activity
• Engaging in interstate or foreign commerce in *endangered* species
• Violating any regulations of the Secretary of Interior pertaining to *endangered* or *threatened* species.

The ESA details prohibited actions for endangered and threatened terrestrial and aquatic plants and animals. Furthermore, it states that state and local governments may provide additional restrictions and penalties, but should state restrictions be less than those provided by the ESA, federal regulations will pre-empt state restrictions.

**Section 10 - Incidental Take**

Most local residents and governments are familiar with Section 10 of the ESA, for this is the section that creates allowances for “take” on private lands. In 1982, congress amended the ESA to allow private landowners to obtain a permit to “take” listed species during the course of otherwise legal activities, as long as the “take” was *incidental* to the activity, and not the purpose. To engage in these activities, one must first get a permit, via establishing a *habitat conservation plan* (HCP). The goal of the HCP is to identify potential impacts and establish measures that will minimize and mitigate these impacts. For example, this might mean delaying harvesting of fields in the spring until a species of bird has completed nesting. A “no-surprise” policy, established in 1998, assures the permit holder that no additional land use restrictions will be required of the landowner, especially in the event of unforeseen circumstances (Sanford, 2001).

Similar to incidental take permits, *Safe Harbor Agreements* also protect landowners. Whereas incidental take permits are created for landowners potentially causing harm to listed species, Safe Harbor Agreements are created for landowners that are potentially improving habitat that would be used by a listed species. In the event that these activities increase the population of a listed species on the land, the landowner is only held to a “baseline” population level and associated land restrictions (U.S. Fish and Wildlife Service, 2013).

Another term familiar to many landowners is the “4(d) permit.” Congress did not expressly dictate prohibitions for threatened species. Instead, the Secretaries of the Interior and Commerce were left to determine which regulations were necessary for these species on an individual basis, as described in Section 4(d) of the ESA (Sullins, 2001). With this discretion, the Secretary of the Interior manages threatened species in a similar manner as endangered species unless an individual ruling is created for a species. For example the Utah Prairie Dog, a threatened species in southern Utah, has a 4(d) ruling that allows for a variety of permitting and “take” options that are less restrictive than the ESA regulations.

**Conclusion**

The Endangered Species Act is a comprehensive legal document outlining a national strategy to conserve endangered and threatened species. This fact sheet was designed to explain the prominent terms and tenets of this act and how it relates to private lands. All of these terms are important to the implementation of the ESA. However, each species is treated individually, because the treats to its persistence are unique to each species. Detailed information can be found on an individual species by visiting the U.S. Fish and Wildlife Service, Ecological Services website <http://www.fws.gov/mountain-prairie/endspp/>.
For an example of options for threatened species management on private lands, please view “Utah Prairie Dogs on Private Lands” (Frey, 2015).

References

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