

ESA Overview Module 6 – Section 10, Exceptions

Exception – 10(a)(1)(A) Permits (slides 6 - 14)

10(a)(1)(A) Permits:

10(a)(1)(A) permits are designed to increase our knowledge and the chance of survival of listed species, and to reduce threats to them.

The Services can issue permits that allow limited incidental take of listed species for scientific research or for activities that enhance the propagation or survival of a listed species. You'll find more information in these CFR sub-titles at 50 CFR 13.11 and 50 CFR 17.22.

The research and recovery permit authorizes limited take of listed species for scientific research, such as captive breeding. The hope in captive breeding is that one day progeny may supplement existing populations or help to establish new populations ... possibly to the point of delisting the species.

The interstate commerce permit allows transportation between states and sale of listed species across state lines, such as transport for captive breeding or to a release site in a recovery project.

For example, a non-profit zoo raises the threatened Chiracahua leopard frog, and rears eggs, tadpoles, juveniles, and adults in captivity. They're then released into suitable recovery areas in Arizona and New Mexico to supplement existing populations or to establish new ones. The zoo would hold a 10(a)(1)(A) permit to propagate, transport, and release tadpoles and frogs into these areas.

A research and recovery permit also authorizes scientific collection for research into diseases affecting wild populations, life histories, habitat use via radio telemetry and global positioning systems (or GPS), human-caused threats, genetics, predation, and population dynamics. Such a permit also could be used to obtain more data to support an incidental take permit, or to provide information in a Section 7 consultation.

Enhancement of propagation or survival permits are not statutory, but regulatory. They're voluntary, geared toward non-Federal partners to promote endangered species conservation on non-Federal lands. Such a permit is issued under either a safe harbor or a candidate conservation agreement with assurances.

A safe harbor agreement gives incentives for a landowner to manage all or a portion of a property for the recovery of listed species, under an agreement or management plan developed with the Services.

A candidate conservation agreement with assurances is an agreement between the Services and non-Federal landowners, including states and corporations, to help conserve candidate species.

The Division of Management Authority, a branch of the Fish and Wildlife Service's international affairs program, issues enhancement of propagation or survival permits. They're used to promote the long-term conservation of fish, wildlife, and plants and their habitats around the world.

Such permits are issued for listed foreign species. They're primarily used with the import or export of live animals, plants, and plant parts, but also for scientific samples like blood or tissue used in conservation research. Import and export of many species also are regulated under the Convention on International Trade in Endangered Species of Wild Fauna and Flora and Federal laws like the Lacey Act and the Marine Mammal Protection Act.

This type of permit can be issued to either Federal or non-Federal entities for enhancement of survival of species in the wild, unlike the next two agreements we'll talk about.

Safe Harbor Agreements

Once a safe harbor agreement is approved by the Services, a landowner gets an enhancement of survival permit. This permit covers conservation measures he agrees to take for the species for routine or ongoing activities on the property for a specified period of time, even though the listed species is present. At the end of this period, if the landowner wants to modify the agreement or no longer participate, the property can be returned to the agreed-upon baseline standards. In other words, should an applicant create new habitat above baseline and then eliminate it, he would not be held responsible for anything over and above what was in the original agreement. This is also called the “no surprises” clause – a permit holder won’t be surprised with additional requirements beyond the original agreement.

An example of this might be: a California vineyard owner enters into a safe harbor agreement with the Fish and Wildlife Service. He restores riparian habitat and agrees to limit the clearing of riparian vegetation to benefit the threatened California red-legged frog and endangered Least Bell’s vireo. The red-legged frog returns, and the vireo’s habitat has developed. The landowner can still operate his vineyard without fear of violating Section 9 of the Endangered Species Act, with the exception that he has agreed not to clear streamside vegetation during these species’ breeding seasons.

The candidate conservation agreement, with assurances, provides incentives to landowners who agree to manage habitat or take other conservation actions to address threats to candidate and at-risk species. The no surprises clause is implemented. The landowner is assured that if the species later becomes listed, he would not have to do anything further than what was in the original agreement. –An enhancement of survival permit is issued along with the agreement and becomes effective if the species is listed.

The real benefit to species from these agreements is that threats may be minimized to the point that listing becomes unnecessary.

Here’s an example: An Ohio nature preserve enters into a candidate conservation agreement to protect the eastern massasauga rattlesnake. The preserve volunteers to undertake conservation measures to reduce or eliminate threats. These include managing the preserve to provide a mosaic of habitats essential for the rattlesnake, controlling invasive species, and providing protective measures such as restoring habitat and minimizing human disturbances. If the rattlesnake is listed in the future, the preserve’s enhancement of survival permit goes into effect.

The Benefits of 10(a)(1)(A) Permits

These permits benefit not only the species, but the non-Federal landowner. We’ve just covered two big ones – “no surprises” and either potential delay of listing, or no listing at all.

Other benefits focus on recovery. Propagation ... translocation ... and reintroduction are recovery efforts for listed species that are supported by these permits. Research, monitoring, and reporting into a listed species’ behavior and use of habitat supplements our knowledge, thus increasing opportunities for successful recovery.

You’ll want to visit Fish and Wildlife Service Safe Harbor and the Candidate Conservation Agreements with Assurances websites for more information.