

Endangered Species Act Section 7 Overview



Whooping crane

THE ENDANGERED SPECIES ACT

Section 2: Findings and Purposes

Section 3: Definitions

Section 4: Listing, Critical Habitat Designation, Recovery, Monitoring

Section 5: Land Acquisition

Section 6: Cooperation with States

Section 7: Cooperation Between Federal Agencies

Section 8: International Cooperation

Section 9: Unlawful Activities

Section 10: Exceptions, including Permits

Section 11: Penalties and Enforcement



Today's Objectives

- **Informal Consultations**
- **Formal Consultations**
- **Biological Assessments**
- **Biological Opinions**
- **Case Study Example**
- **Questions**



Section 7 – Interagency Cooperation



Interior least tern

Consultations

Section 7

Requires Federal agencies to:

- 7(a)(1) - Conduct programs to conserve endangered and threatened species
- 7(a)(2) – Ensure that actions they authorize, fund, or carry out are not likely to **jeopardize** the continued existence of listed species or **adversely modify** critical habitat



Jeopardy

- Jeopardy
 - An action that would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or the distribution of that species



Factors to be considered:

- What is the action area?
- Proximity of the action to listed species
- Proximity of the effects to listed species
- Distribution of the species and habitat use
- Timing of the effects
- Duration of the effects
- Type of effects



Section 7

Effect Determinations

No Effect

- Project will not affect listed species or critical habitat.

May Affect

- Not Likely to Adversely Affect = **Informal Consultation**
- Likely to Adversely Affect = **Formal Consultation**
 - Project will adversely affect listed species or critical habitat.



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Informal Consultation

- A voluntary process that includes all discussions, correspondence, etc. between the Service and the Federal agency
- Assists the Federal agency in determining the appropriate level of consultation



Informal Consultation

Advantages

- Can explore opportunities to benefit the species
 - Conservation mandate – Section 7(a)(1)
- **SAVE TIME!!!**- allows the development of creative alternatives and modifications that if made can result in no further consultation



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 - Project will result in **adverse modification of critical habitat.**



Take

- Take:
 - To **harass, harm**, pursue, hunt, shoot, **wound, kill, trap**, capture, or collect, or to attempt to engage in any such conduct.
 - At the individual level



Leopard darter

Take

Harm - Significant habitat modification or degradation that impairs essential behavioral patterns (breeding, spawning, rearing, migrating, feeding or sheltering).

Harass- Likelihood of injury to wildlife by annoying a species enough to significantly disrupt normal behavior patterns (breeding, spawning, rearing, migrating, feeding, or sheltering).

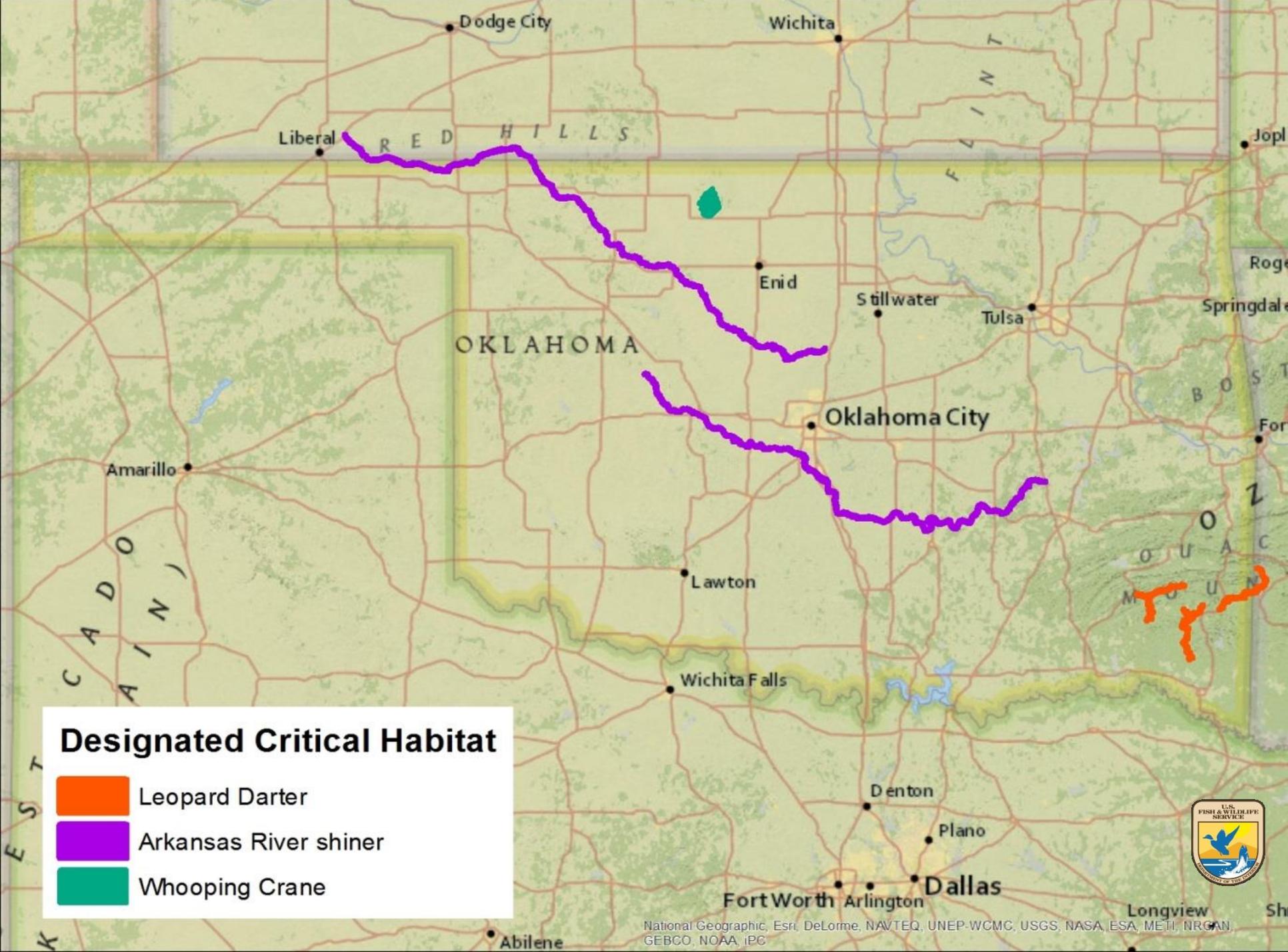


Critical Habitat

Purpose of critical habitat designation

- Designation required by the ESA
- Identifies key biological and physical needs of the species
- Identifies key areas for recovery
- Focuses conservation actions on those areas





Designated Critical Habitat

-  Leopard Darter
-  Arkansas River shiner
-  Whooping Crane



Adverse modification

- Direct or indirect alteration that appreciably diminishes the value of critical habitat for both survival and recovery of a listed species



Formal Consultations

When adverse effects are unavoidable, the Federal agency requests initiation of formal consultation:

- Biological Assessment - relies on more **detailed descriptions** and other relevant studies, proposal reports, etc.
- Up to 90 days of consultation, followed by 45 days to produce a “biological opinion” (135 days total)
- Consultation ‘clock’ doesn’t start until the USFWS has all information necessary to evaluate the project



Biological Opinion

Includes:

- Incidental take statement estimating amount of take that may occur incidental to the action
- Reasonable and prudent measures to minimize take
- Reinitiation Clause



Reinitiation of Formal Consultation

- 1) the amount or extent of incidental take is exceeded
- 2) new information on effects of agency action that may affect listed species or critical habitat
- 3) the agency modifies their action in a manner that was not considered in the biological opinion
- 4) a new species is listed or critical habitat designated that may be affected by the action.



Case Study Examples



Questions?



American alligator