

BLOG POST

Fish and Wildlife Maps Out the Next 5 Years of Endangered Species Activity

February 13, 2013

On Friday, the Fish and Wildlife Service published a workplan which is required reading for any entity seeking to undertake project development in the US in the next five years. Spurred by litigation into acting on its tremendous backlog of Endangered Species listings and Critical Habitat designations, FWS has planned out the actions it will take every year for the next five years for 455 different species. The workplan is a guidepost to the regulated community of where and when FWS will be taking action to protect species and their habitat. It is mandatory reading for any entity hoping to undertake project development in areas which may contain potentially covered species or their habitat.

Those of you familiar with the listing process are used to a high percentage of FWS species determinations resulting in a finding that the species is ineligible for listing. This list will produce very different results, since most of the species have previously been identified by FWS as eligible for listing and were only not listed previously because FWS didn't have the resources to do so. The regulated community should expect to see most of the species on the FWS workplan listed and critical habitat for the species designated.

Industries hoping to avoid the listing of a particular species will not only need to be creative - as the oil and gas industry was last year in keeping the Sand Dunes Lizard off the list - but now have a timeline for when they need to complete their innovative solutions. For example, FWS will act on the Lesser Prairie Chicken, which also threatens oil and gas activities, next year.

Almost as significant as what is on the list, is what isn't. The large number of species front-loaded on FWS's workplan - 171 species this year, and 84 next year - means that the Service will have little, if any time, for actions on any other species. Even FWS acknowledged this in its announcement regarding the workplan, stating that it "anticipates initiating other listing actions within this planning horizon, particularly in Fiscal Years 2017 and 2018."

The workplan can be found at: http://www.fws.gov/endangered/improving_ESA/FY13-18_ESA_Listing_workplan.pdf Even more useful than this pdf version is FWS' sortable Excel format of the workplan, which allows you to identify species in a particular area or on a specific time horizon. That version is available at http://www.fws.gov/endangered/improving_ESA/FY13-18_ESA_Listing_workplan.xlsx

For more information on the listing process or on creative ways to avoid the impacts of listing, please contact Lowell Rothschild at lowell.rothschild@bgllp.com or (202) 828-5817.