

[Home Page](#) > [Executive Branch](#) > [Code of Federal Regulations](#) > [Electronic Code of Federal Regulations](#)



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Title 50: Wildlife and Fisheries

[Browse Previous](#) | [Browse Next](#)

PART 81—CONSERVATION OF ENDANGERED AND THREATENED SPECIES OF FISH, WILDLIFE, AND PLANTS—COOPERATION WITH THE STATES

Section Contents

- [§ 81.1 Definitions.](#)
- [§ 81.2 Cooperation with the States.](#)
- [§ 81.3 Cooperative Agreement.](#)
- [§ 81.4 Allocation of funds.](#)
- [§ 81.5 Information for the Secretary.](#)
- [§ 81.6 Project Agreement.](#)
- [§ 81.7 Availability of funds.](#)
- [§ 81.8 Payments.](#)
- [§ 81.9 Assurances.](#)
- [§ 81.10 Submission of documents.](#)
- [§ 81.11 Divergent opinions over project merits.](#)
- [§ 81.12 Contracts.](#)
- [§ 81.13 Inspection.](#)
- [§ 81.14 Comprehensive plan alternative.](#)
- [§ 81.15 Audits.](#)

Authority: Endangered Species Act of 1973, sec. 6(h), 87 Stat. 884, 16 U.S.C. 1531–43, Pub. L. 93–205.

Source: 40 FR 47509, Oct. 9, 1975, unless otherwise noted.

§ 81.1 Definitions.



[top](#)

As used in this part, terms shall have the meaning ascribed in this section.

(a) *Agreements.* Signed documented statements of the actions to be taken by the State(s) and the Secretary in furthering the purposes of the Act. They include:

(1) A Cooperative Agreement entered into pursuant to section 6(c) of the Endangered Species Act of 1973 and §81.2 of this part.

(2) A Project Agreement which includes a statement as to the actions to be taken in connection with the conservation of endangered or threatened species, benefits derived, cost of actions, and costs to be

borne by the Federal Government and by the States.

(b) *Conserve, conserving, and conservation.* The use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Endangered Species Act of 1973 are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(c) *Endangered species.* Any species which is in danger of extinction throughout all or a significant portion of its range (other than a species of the Class Insecta as determined by the Secretary to constitute a pest whose protection under the provisions of The Endangered Species Act of 1973 would present an overwhelming and overriding risk to man).

(d) *Fish or wildlife.* Any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

(e) *Plant.* Any member of the plant kingdom, including seeds, roots, and other parts thereof.

(f) *Program.* A State-developed set of goals, objectives, strategies, action, and funding necessary to be taken to promote the conservation and management of resident endangered or threatened species.

(g) *Secretary.* The Secretary of the Interior or his authorized representative.

(h) *Species.* This term includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.

(i) *State.* Any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(j) *State agency.* The State agency or agencies, or other governmental entity or entities which are responsible for the management and conservation of fish or wildlife resources within a State.

(k) *Plan.* A course of action under which immediate attention will be given to a State's resident species determined to be endangered or threatened.

(l) *Threatened species.* Any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, as determined by the Secretary.

(m) *Project.* A plan undertaken to conserve the various species of fish and wildlife or plants facing extinction.

(n) *Act.* The Endangered Species Act of 1973, Pub. L. 93-205, 16 U.S.C. 1531 *et seq.*

(o) *Project segment.* An essential part or a division of a project, usually separated as a period of time, occasionally as a unit of work.

(p) *Resident species.* For the purposes of the Endangered Species Act of 1973, a species is resident in a State if it exists in the wild in that State during any part of its life.

[40 FR 47509, Oct. 9, 1975, as amended at 44 FR 31580, May 31, 1979; 49 FR 30074, July 26, 1984]

§ 81.2 Cooperation with the States.



The Secretary is authorized by the act to cooperate with any State which establishes and maintains an adequate and active program for the conservation of various endangered and threatened species. In

order for a State program to be deemed an adequate and active program, the Secretary must find and reconfirm, on an annual basis, that under the State program, either:

- (a) Authority resides in the State agency to conserve resident species of fish and wildlife or plants determined by the State agency or the Secretary to be endangered or threatened;
- (b) The State agency has established an acceptable conservation program, consistent with the purposes and policies of the act, for all residents species of fish and wildlife or plants in the State which are deemed by the Secretary to be endangered or threatened; and has furnished a copy of such program together with all pertinent details, information, and data requested to the Secretary;
- (c) The State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife or plants;
- (d) The State agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered or threatened species; and
- (e) Provisions are made for public participation in designating resident species of fish and wildlife or plants as endangered or threatened, or that under the State program: (1) The requirements set forth in paragraphs (c), (d), and (e) of this section are complied with concerning fish and wildlife and in paragraphs (c) and (e) of this section concerning plants, and plans are included under which immediate attention will be given to those resident species of fish and wildlife or plants which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to this paragraph shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) of the Endangered Species Act of 1973 with respect to the taking of any resident endangered or threatened species.

[41 FR 15016, Apr. 9, 1976, as amended at 44 FR 31580, May 31, 1979]

§ 81.3 Cooperative Agreement.



Upon determination by the Secretary that a State program is adequate and active and complies with §81.2, the Secretary shall enter into an Agreement with the State. A Cooperative Agreement is necessary before a Project Agreement can be approved for endangered or threatened species projects. A cooperative agreement under §81.2 must be reconfirmed annually to reflect new laws, species lists, rules and regulations, and programs, and to demonstrate that the program is still active and adequate. The Secretary, in determining which species are most urgently in need of a conservation program as provided for in §81.2(e), shall apply the following criteria: (1) The degree of threat to the continued existence of the species; (2) the recovery potential of the species; (3) the taxonomic status, e.g., giving full species priority over subspecies or populations; and (4) such other relevant biological factors as determined appropriate.

[41 FR 15016, Apr. 9, 1976, as amended at 44 FR 31580, May 31, 1979]

§ 81.4 Allocation of funds.



The Secretary shall semi-annually allocate funds, appropriated for the purpose of carrying out Section 6, to various State programs using the following as the basis for his determination:

- (a) The international commitments of the United States to protect endangered or threatened species;
- (b) The readiness of a State to proceed with a conservation program consistent with the objectives and purposes of the Act;
- (c) The number of endangered and threatened species within a State;

(d) The potential for restoring endangered and threatened species within a State; and

(e) The relative urgency to initiate a program to restore and protect an endangered or threatened species in terms of survival of the species.

[40 FR 47509, Oct. 9, 1975, as amended at 44 FR 31580, May 31, 1979]

§ 81.5 Information for the Secretary.



Before any Federal funds may be obligated for any project to be undertaken in a State, the State must have entered into a Cooperative Agreement with the Secretary pursuant to section 6(c) of the Act.

§ 81.6 Project Agreement.



(a) Subsequent to the establishment of a Cooperative Agreement pursuant to §81.3, the Secretary may further agree with the States to provide financial assistance in the development and implementation of acceptable projects for the conservation of endangered and threatened species. Financial agreements will consist of an Application for Federal Assistance and a Project Agreement. Such agreements' continued existence, and continued financial assistance under such agreements, shall be contingent upon the continued existence of the Cooperative Agreement described in §81.3 of this part.

(b) The Application for Federal Assistance will show the need for the project, the objectives, the expected benefits and results, the approach, the period of time necessary to accomplish the objectives, and both the Federal and State costs. All of a State's activities proposed for this Federal grant support will be incorporated in one or more project applications.

(c) To meet the requirements of the Act, the Application for Federal Assistance shall certify that the State agency submitting the project is committed to its execution and that it has been reviewed by the appropriate State officials and is in compliance with other requirements of the Office of Management and Budget Circular No. A-95 (as revised).

(d) The Project Agreement will follow approval of the Application for Federal Assistance by the Secretary. The mutual obligations by the cooperating agencies will be shown in this agreement executed between the State and the Secretary. An agreement shall cover the financing proposed in one project segment and the work items described in the documents supporting it.

(e) The form and content for both the Application for Federal Assistance and the Project Agreement are provided in the Federal Aid Manual.

[40 FR 47509, Oct. 9, 1975, as amended at 44 FR 31581, May 31, 1979]

§ 81.7 Availability of funds.



Funds allocated to a State are available for obligation during the fiscal year for which they are allocated and until the close of the succeeding fiscal year. For the purpose of this section, obligation of allocated funds occurs when a Project Agreement is signed by the Secretary, or his authorized representative, attesting to his approval.

§ 81.8 Payments.



The payment of the Federal share of costs incurred in the conduct of activities included under a Project Agreement shall be in accordance with Treasury Circular 1075.

(a) Federal payments under the Act shall not exceed 75 percent of the program costs as stated in the agreement; except, the Federal share may be increased to 90 percent when two or more States having a common interest in one or more endangered or threatened species, the conservation of which may be enhanced by cooperation of such States, enter jointly into an agreement with the Secretary.

(b) The State share of program costs may be in the form of cash or in-kind contributions, including real property, subject to standards established by the Secretary as provided in Office of Management and Budget Circular A-102.

(c) Payments under the Endangered Species Act, including such preliminary costs and expenses as may be incurred in connection with projects, shall not be made unless all documents that may be necessary or required in the administration of this Act shall have first been submitted to and approved by the Secretary. Payments shall be made for expenditures reported and certified by the State agencies. Payments shall be made only to the State office or official designated by the State agency and authorized under the laws of the State to receive public funds of the State.

(d) Vouchers and forms provided by the Secretary and certified as therein prescribed, showing amounts expended and the amount of Federal Aid funds claimed to be due on account thereof, shall be submitted to the Secretary by the State agency.

[40 FR 47509, Oct. 9, 1975, as amended at 44 FR 31581, May 31, 1979; 49 FR 30074, July 26, 1984]

§ 81.9 Assurances.



The State must assure and certify that it will comply with all applicable Federal laws, regulations, and requirements as they relate to the application, acceptance, and use of Federal funds for projects under the Act in accordance with Office of Management and Budget Circular A-102.

[40 FR 47509, Oct. 9, 1975, as amended at 44 FR 31581, May 31, 1979]

§ 81.10 Submission of documents.



Papers and documents required by the Act or by regulations in this part shall be deemed submitted to the Secretary from the date of receipt by the Director of the U.S. Fish and Wildlife Service.

§ 81.11 Divergent opinions over project merits.



Any difference of opinion about the substantiality of a proposed project or appraised value of land to be acquired are considered by qualified representatives of the Secretary and the State. Final determination in the event of continued disagreement rests with the Secretary.

§ 81.12 Contracts.



The State may use its own regulations in obtaining services providing that they adhere to Federal laws and the requirements provided by Office of Management and Budget Circular A-102. The State is the responsible authority without recourse to the Secretary regarding settlement of contractual issues.

[40 FR 47509, Oct. 9, 1975, as amended at 44 FR 31581, May 31, 1979]

§ 81.13 Inspection.



Supervision of each project by the State shall include adequate and continuous inspection. The project will be subject to periodic Federal inspection.

§ 81.14 Comprehensive plan alternative.



In the event that the State elects to operate under a comprehensive fish and wildlife resource planning system, the Cooperative Agreement will be an attachment to the plan. No Application for Federal Assistance will be required since the documentation will be incorporated in the plan. However, the continued existence of the comprehensive plan, and Federal financing thereunder, will be contingent upon the continued existence of the Cooperative Agreement described in §81.3, above.

§ 81.15 Audits.



The State is required to conduct an audit at least every two years in accordance with the provisions of Attachment P of OMB Circular A-102. Failure to conduct audits as required may result in withholding of grant payments or such other sanctions as the Secretary may deem appropriate.

[49 FR 30074, July 26, 1984]

[Browse Previous](#) | [Browse Next](#)

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