

Endangered Species and Oil & Gas Operations

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Environmental Law in Oil & Gas

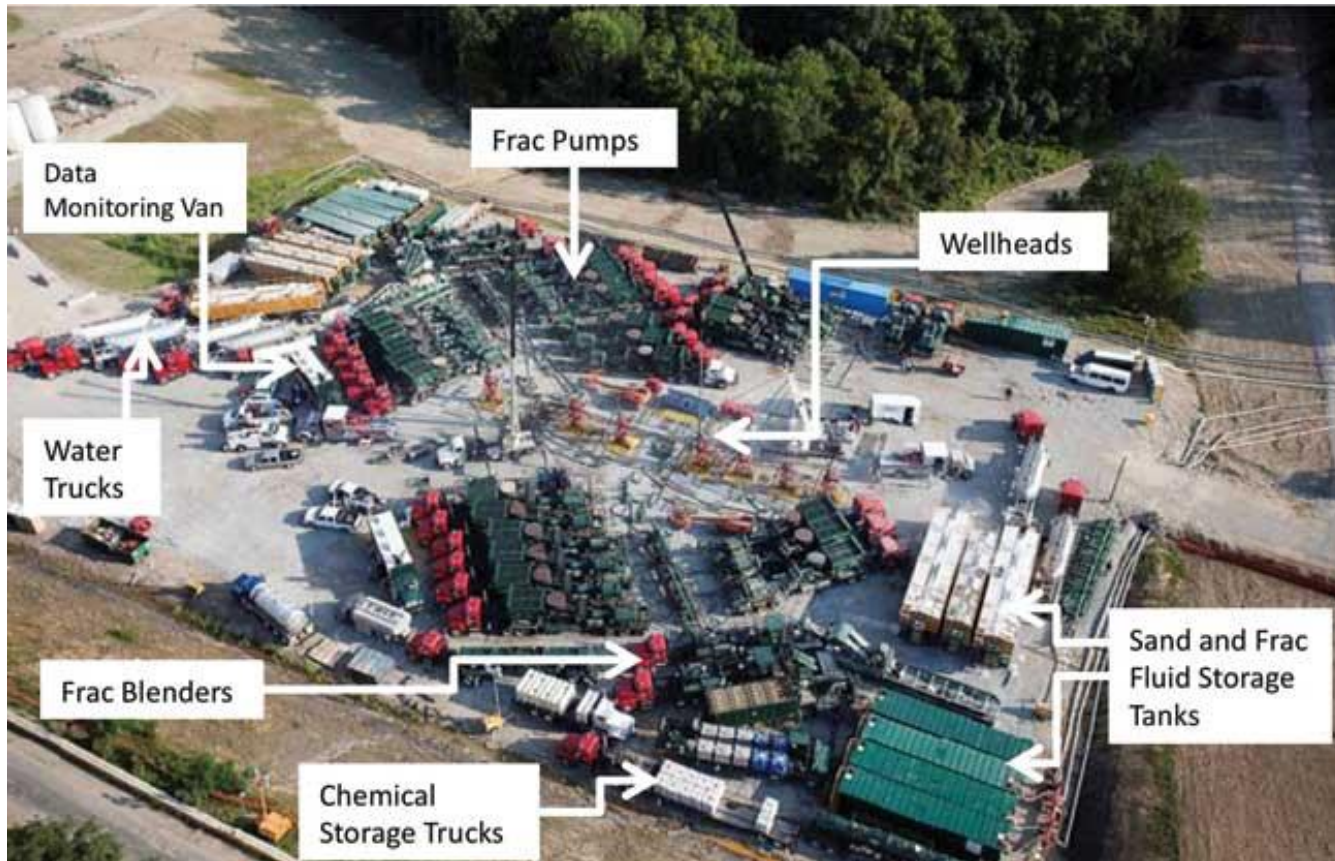
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Review

- Water Law concepts:
 - Surface water
 - State ownership, with permits issued for right to withdraw
 - Prior appropriation doctrine: first in time, first in right
 - Water calls
 - Environmental flows
 - Groundwater
 - Owned by property owner (either surface or divided estate)
 - Rule of capture under common law – no limits
 - Current system: groundwater and subsidence districts
 - Usufructory ownership – takings claims?

Key questions for Texas water law and E&P operations



So how do you protect a species?



If you were drawing up a strategy from a blank slate, what decisions would you have to make at the start?

So how do you protect a species?



What is a species?

What are you protecting when you save a species?

How far should you go to protect a species?

Who gets to decide? And who bears the burden?

So how do you protect a species?



Quickly get into fundamental questions: what is a species?





Structure of the Endangered Species Act

- Section 4 – *Listing*
 - Threatened or Endangered (or in-between)
 - Based on science, not cost
 - All animals; plants only if protected by state law; excludes insect pests
 - Candidate Conservation Agreements
- Section 7 – *Consultation*
 - Jeopardy determination
 - Biological assessment
 - Biological opinion with mitigation options
 - Incidental Take Permits



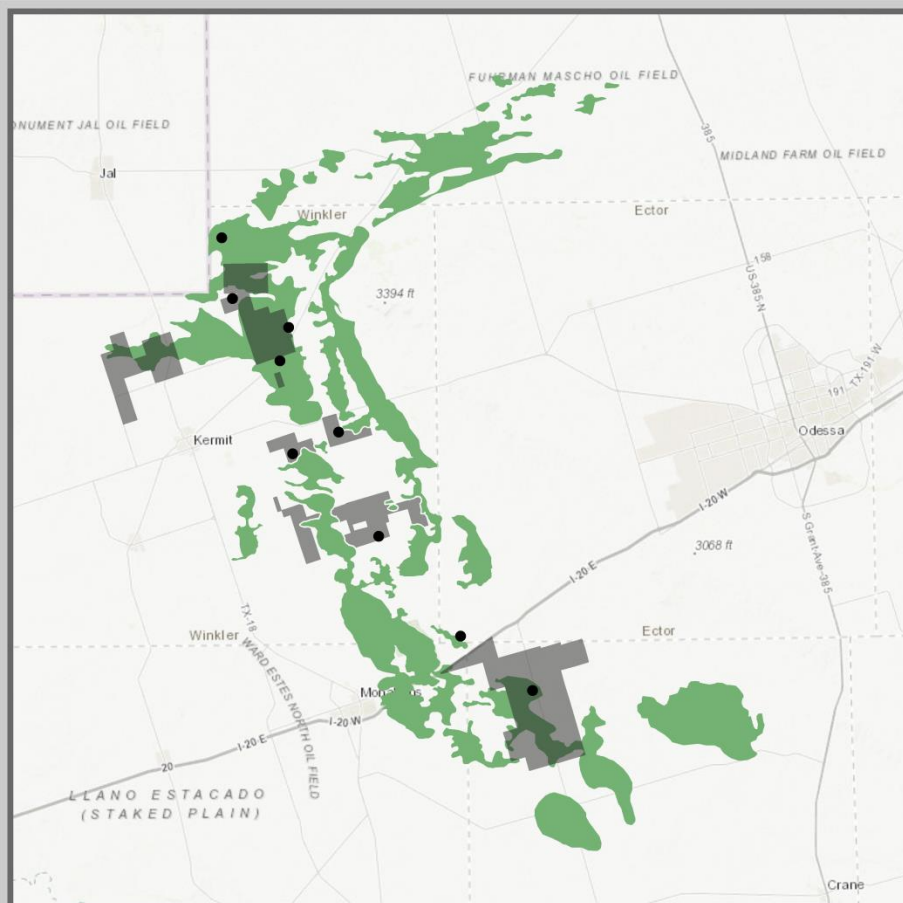
Structure of the Endangered Species Act

- Section 9 – *No Takings*
 - Applies to everyone, not just the federal government
 - Habitat as well as members of species, if direct taking
 - Civil and criminal liability
 - “Knowing” element loosely defined
- Other acts along the same lines
 - Migratory Bird Treaty Act
 - Bald and Golden Eagle Protection Act
 - State endangered species acts

ESA and Oil & Gas Production



ESA and Oil & Gas E&P Conflicts



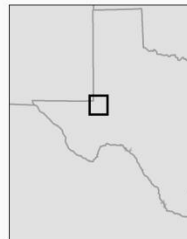
Sand Mining within Dunes Sagebrush Lizard Range in West Texas

- Sand Mine Site
- Sand Mine Lease Boundary
- Dunes Sagebrush Lizard Range

0 1.25 2.5 5 7.5 10 miles



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Data sources: TPWD, Esri



- Conflict – Sand mining for fracking
- Dune Sagebrush lizard habitat
 - Excavation – no reclamation, 80 feet deep
 - 70 acres per site
 - 20,000 acres of habitat within planned mining zones
 - 271 acres already disturbed



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