

Endangered Species Act - Legal and Research Needs to Protect State Right to Manage

FY2022 Request: \$4,000,000
Reference No: 43347

AP/AL: Appropriation **Project Type:** Research / Studies / Planning
Category: Natural Resources
Location: Statewide **House District:** Statewide (HD 1-40)
Impact House District: Statewide (HD 1-40) **Contact:** Eddie Grasser
Estimated Project Dates: 07/01/2021 - 06/30/2026 **Contact Phone:** (907)267-2339

Brief Summary and Statement of Need:

This capital project provides funds to fight unnecessary Endangered Species Act (ESA) actions. It will help the state to avoid federal ESA regulatory burdens and maintain the state's right to manage fish and wildlife. This project enables the state's legal and scientific engagement on ESA issues.

Funding:	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	Total
1002 Fed Rcpts	\$3,000,000						\$3,000,000
1003 G/F Match	\$250,000						\$250,000
1004 Gen Fund	\$750,000						\$750,000
Total:	\$4,000,000	\$0	\$0	\$0	\$0	\$0	\$4,000,000

<input checked="" type="checkbox"/> State Match Required	<input type="checkbox"/> One-Time Project	<input type="checkbox"/> Phased - new	<input checked="" type="checkbox"/> Phased - underway	<input type="checkbox"/> Ongoing
25% = Minimum State Match % Required		<input type="checkbox"/> Amendment	<input type="checkbox"/> Mental Health Bill	

Operating & Maintenance Costs:

	<u>Amount</u>	<u>Staff</u>
Project Development:	0	0
Ongoing Operating:	0	0
One-Time Startup:	0	0
Totals:	0	0

Prior Funding History / Additional Information:

Sec1 Ch3 SLA2019 P4 L6 SB19 \$1,000,000
 Sec1 Ch17 SLA2012 P116 L27 SB160 \$1,550,000
 Sec7 Ch43 SLA2010 P26 L26 SB230 \$600,000
 Sec4 Ch30 SLA2007 P93 L14 SB53 \$473,300

Project Description/Justification:

If unchecked, regulatory burdens will expand due to federal endangered species issues. This expansion will restrict states' rights and the ability of industry to operate in Alaska. For example, the federal government is or has considered designating almost all of the waters off Alaska as critical habitat for marine mammals listed under the Endangered Species Act (ESA), which would constrain industrial and other activities despite little to no benefit to the listed marine mammals. For the State to successfully defend against existing and potential new, unnecessary regulations, funds are needed to adequately engage in the federal ESA process, from supporting legal challenges to ensuring scientific information is available to make informed decisions and to support successful legal arguments. Legal engagement, along with supporting scientific data, are effective in limiting regulatory impacts from federal ESA listings. Inadequate information typically results in stronger

regulatory protection measures, which in many instances may provide little to no conservation benefit to the species.

This project will enable critical research to inform ESA decisions and to support legal engagement when actions on ESA-listed or candidate species are implemented based on faulty application of federal regulations. Research projects will be pursued to:

1. Inform listing decision for species likely to be petitioned for listing under the ESA, for example, northern fur seals.
2. Obtain information to minimize unnecessary burdens on resource development, subsistence, and other activities; and
3. Focus ESA recovery actions on activities that increase population size and result in recovery and delisting.

Legal engagement would include activities such as drafting delisting petitions and joining selected lawsuits, such as the recent challenge to the critical designation of unoccupied habitat. The department needs to have the flexibility to address issues as they arise.

Activities Exemplifying Legal Engagement

This project would allow the Alaska Department of Law to cooperate with the Alaska Department of Fish & Game, Division of Wildlife Conservation, to provide legal support to actively challenge unwarranted ESA listing decisions and other ESA actions, thereby avoiding unnecessary regulations that may impede economic and other activities. Legal engagement activities include the following:

- successful delisting of the Eastern Distinct Population Segment (DPS) of Steller sea lions;
- the pending delisting petition for the Arctic subspecies of ringed seals;
- previous and potential future involvement in litigation challenging the issuance of incidental take permits for Cook Inlet beluga whales;
- work that helped USFWS conclude that yellow cedar was not warranted for listing; and
- potential future challenges to unsupported ESA listing or other actions.