Federal Endangered Species Act

- Purpose to protect and recover imperiled species and ecosystems
- Species listed as threatened or endangered
- Geographic areas essential to conserve the species may be designated as “critical habitat”
- Prohibits “take” without federal permit
  - harass or harm
  - wound
  - kill
  - capture
  - hunt
- Provides for “incidental takes”
Section 7 Consultation

Federal Action

Listed Species or Critical Habitat Present

Is Action Likely to Adversely Effect Species or Habitat

Written Concurrence and Consultation Concludes

YES

Formal Consultation

Biological Opinion – Is Action Likely to Jeopardize the Continued Existence of the Species?

Reasonable/Prudent Alternatives and Incidental Take Statement

NO
Section 10 Incidental Take Permit

- No federal nexus required
- Will not “appreciably reduce the likelihood of survival and recovery of the species in the wild”
- Habitat Conservation Plan
- Public Process
Maine Examples of Listed Species

- Atlantic salmon
- Canada lynx
- Piping plovers
- NLEB
- Bald eagle (no longer listed)
Maine Endangered Species Act

• Only prohibits negligent and intentional takes
• Must result in death of listed species
• Process for obtaining an incidental take permit to avoid liability
• Essential habitat
  – Management guidelines
  – State agencies and municipalities cannot issue permit for development in such areas without consent of IFW
Maine Examples

- Piping plovers – Essential Habitat
- Roseate terns – Essential Habitat
- Least tern – Essential Habitat

Other species listed include:
- 3 bat species
- Black racer snake
- 3 turtle species
- 3 freshwater mussels
- Mayflies/dragonflies
Liability/Enforcement

State

- Criminal Liability Only
- No Citizen Suit Provision

Federal

- Criminal and Civil Liability
- Citizen Suit Provision
Find discussion of the most critical and timely legal issues pertaining to the environment and natural resources on Verrill Dana’s Environmental Law Blog, Law of the Land (and Air and Water):

www.EnvironmentalLawUpdate.com