

## ENDANGERED SPECIES & WILDLIFE



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Van Ness Feldman has extensive experience representing a broad range of client interests with respect to the Endangered Species Act (ESA). The firm's attorneys and public policy professionals are renowned for their skill in navigating the myriad intricacies involved with the implementation of the Act through a combination of experience including: acting as attorneys for the Department of the Interior and other government agencies; participating in Congressional debates over the Act as staff to the committees with oversight responsibility for the law or for individual Members of Congress; litigating the Act on behalf of private sector clients; and by providing counsel on complying with the ESA in the most timely and cost-effective manner possible.

The firm's approach centers on resolving ESA matters in a manner that both accommodates and balances clients' economic demands with the objectives of the Act in a way that avoids public conflict. When necessary, our team has a strong track record of litigating to protect clients' rights or to improve a negotiating position with the agencies charged with implementation.

### REGULATORY COUNSELING

Providing a full-range of ESA counsel related to project planning, development, and regulatory compliance, our team is highly skilled at both "traditional" ESA regulatory compliance, as well as the identification of alternative options for resolving conflicts in a manner that benefits both client operations and particular species.

**Pre-Regulatory Counseling.** We assist clients in identifying potential ESA problems in advance of regulatory developments and with how to plan projects that avoid or minimize ESA impacts.

**Section 7 Compliance Issues.** Our team regularly provides counsel on formal and informal consultations with the U.S. Fish and Wildlife Service (USFWS) and NOAA Fisheries on a wide variety of § 7 compliance issues including the development of biological assessments and biological opinions; responses to "jeopardy opinions;" development of reasonable and prudent alternatives; and development of incidental take statements.

**Habitat Conservation Plans.** We provide counsel on, and participate in, the development of ESA § 10(a) habitat conservation plans and applications for incidental take permits.

**Recovery Plans.** We represent clients in the development of single and multi-species recovery plans, including multi-state plans requiring coordination of federal, state, and local interests.

**Critical Habitat Designation.** Our team provides counsel on the effects of critical habitat designation and represents clients in the designation process.

**Listing and Delisting Species.** We have significant experience with the process for adding and removing species from the lists of threatened and endangered species, and regularly evaluate the probable impacts of species reclassifications.

## ESA LITIGATION

The development of a defensible ESA compliance program requires an acute appreciation for the likely issues that may arise in any future litigation and the ability to foresee, identify, address, and then, if necessary, defend against any challenge.

Our team prides itself on being able to provide clients with this type of strategic judgment and, when necessary, provide aggressive representation in the courts. The firm has represented clients in cases involving ESA issues before numerous federal district courts, appellate courts, and the U.S. Supreme Court.

## CONGRESSIONAL REPRESENTATION

We have an exceptionally strong reputation for representing clients before Congress on matters such as:

- obtaining federal appropriations to assist in compliance with ESA requirements;
- lobbying for amendments to address specific aspects of the ESA or its application to specific fact situations;
- and participating in major debates over the reauthorization of the Act itself.

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