

Streaked Horned Lark Case and Consequences for WPPA Members

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*WPPA Annual
Meeting 2025*

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Agenda

- **Endangered Species Act Background**
- **Listing and 4(d) Rule** for Streaked Horned Lark
- **Court Ruling** in September 2025
- **Practical Implications**



Endangered Species Act

Section 4 – Listing



- USFWS and NOAA list species as “endangered” or “threatened”
 - Endangered = “in danger of” extinction
 - Threatened = “likely” to become endangered within “foreseeable future”
- 5 listing factors:
 - (A) the present or threatened destruction, modification, or curtailment of its habitat or range;
 - (B) overutilization for commercial, recreational, scientific, or educational purposes;
 - (C) disease or predation;
 - (D) the inadequacy of existing regulatory mechanisms; or
 - (E) other natural or manmade factors affecting its continued existence.

16 USC § 1533(a)(1)

Endangered Species Act

Section 4 – Listing Standard



The Secretary shall make determinations required by subsection (a)(1) ***solely on the basis of the best scientific and commercial data available*** to him after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction; or on the high seas.

16 USC § 1533(b)(1)(A)

Endangered Species Act

Section 4 – Critical Habitat



The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

16 USC § 1533(b)(2)

Section 7 – Interagency Consultation

- ESA Section 7 (16 USC 1536) requires federal agencies to consult with NMFS/FWS to ensure that action does not:
 - Jeopardize the continued existence of listed species
 - Adversely modify critical habitat
- Applies to wide variety of actions, including grazing permits and Clean Water Act permits
- Consultation may culminate in “biological opinion”
- Regulations permit “informal consultation” – ends if agency concurs that action “not likely to adversely affect” species/habitat (50 CFR 402.13)



ESA §9 Take Prohibition

- ESA Section 9 (16 USC 1538) prohibits:
 - Take of Endangered species
 - Import/Export of Endangered species
- Services may extend prohibitions to Threatened species by Rule, per section 4(d)
- Take is broadly defined:
 - The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.
 - “Harm” in the definition of take means “an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.”



ESA §10 Permits

- Section 10 authorizes permits for take incidental to otherwise lawful activity
- Generally requires submission of habitat conservation plan (HCP) which explains how impacts of taking will be minimized and mitigated
- Can cover one species or multiple
- Terms can be very long (up to 70+ yr)
- As an alternative, Conservation Benefit Agreements can be eligible for enhancement permits



Streaked Horned Lark

Listing and 4(d) Rules

- First identified as candidate for listing in 2001
- Listed with “4(d)” rule in 2013 (78 FR 61451)
- Uses sand islands in lower Columbia for breeding habitat; need areas with sparse but established vegetation
- Airports and agricultural fields are good habitat; Corvallis airport hosts largest population



Streaked Horned Lark

4(d) Rule (2013)

- 2013 4(d) Rule exempted airport maintenance rangewide, plus ag practices in Willamette Valley only

- Ag practices defined as:

a mode of operation on a farm that: (A) Is or may be used on a farm of a similar nature; (B) Is a generally accepted, reasonable, and prudent method for the operation of the farm to obtain a profit in money; (C) Is or may become a generally accepted, reasonable, and prudent method in conjunction with farm use; (D) Complies with applicable State laws; and (E) Is done in a reasonable and prudent manner.

50 CFR 17.41(a).



Streaked Horned Lark 4(d) Rule (2022)

- Expanded ag practices exemption to all non-federal lands in OR & WA
- Section 4(d) permits any regulation that is deemed “necessary and advisable” for the conservation of the species

16 USC 1533(d)

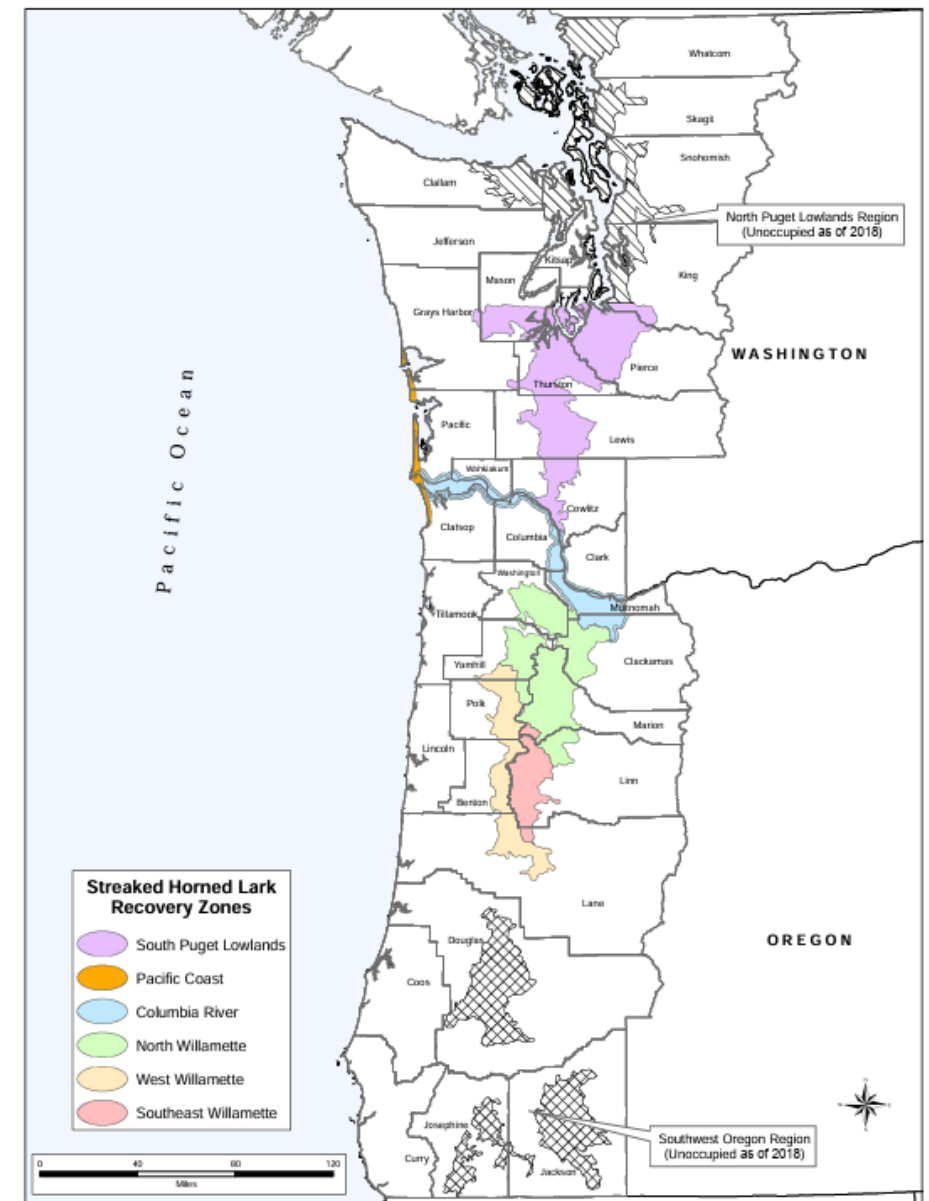


Figure 1. Streaked Horned Lark Recovery Zones

Streaked Horned Lark Ruling

- Threatened listing remanded
 - Court found that FWS had failed to take into account effects of existing small population size
 - Also faulted Service's resiliency analysis
- 2022 4(d) rule vacated
 - Court upheld application to Willamette Valley
 - Found expansion to entire range lacked record support and was arbitrary & capricious
- New listing determination due 9/29/2026

Center for Biological Diversity v. Burgum, No. 3:23-cv-00150-AN, 2025 WL 2781718 (D. Or. Sept. 29, 2025)



Implications of the ruling

- Possible endangered listing after remand
 - Would likely impose greater restrictions on use of and impacts to sand islands/ placement of dredge spoil
 - More difficulty in obtaining HCPs
 - No 4(d) rule permitted for endangered species
- Narrowing of 4(d) rule
 - Ag practices along the Columbia River and in WA no longer exempt
 - Potential litigation/enforcement risk
- SHL continues to be endangered under WA's ESA



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Thank you!

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