



**AMERICAN  
CONSERVATION  
FOUNDATION**

## **2<sup>nd</sup> Virtual Public Informational Meeting**

Texas Conservation Plan for the Dunes Sagebrush Lizard

# AGENDA

- **Laws and Regulations – ESA Background**
- **ESA Listing Process**
- **Candidate Species**
- **Candidate Conservation Agreement with Assurances (CCAA)**
- **DSL Background**
- **USFWS Proposed Rule to list the DSL**
- **DSL Previous Federal Actions**
- **2023 DSL Proposal to List Deadlines**
- **Texas Conservation Plan Background**
- **American Conservation Foundation, Inc.**
- **Enrollment in the TCP**
- **DSL Maps/Models**
- **Certificate of Inclusion (CI)**
- **\*Q&A Session\***

**DURING THE PRESENTATION YOU MAY SUBMIT QUESTIONS VIA THE ZOOM CHAT.**

*Questions will be answered in the order received at the end of the presentation.*

**CONFIDENTIALITY – ONLY ACF AS THE MEETING ADMINISTRATOR WILL SEE YOUR QUESTION.**

*ACF will read your question aloud while maintaining your confidentiality.*

# LAWS AND REGULATIONS

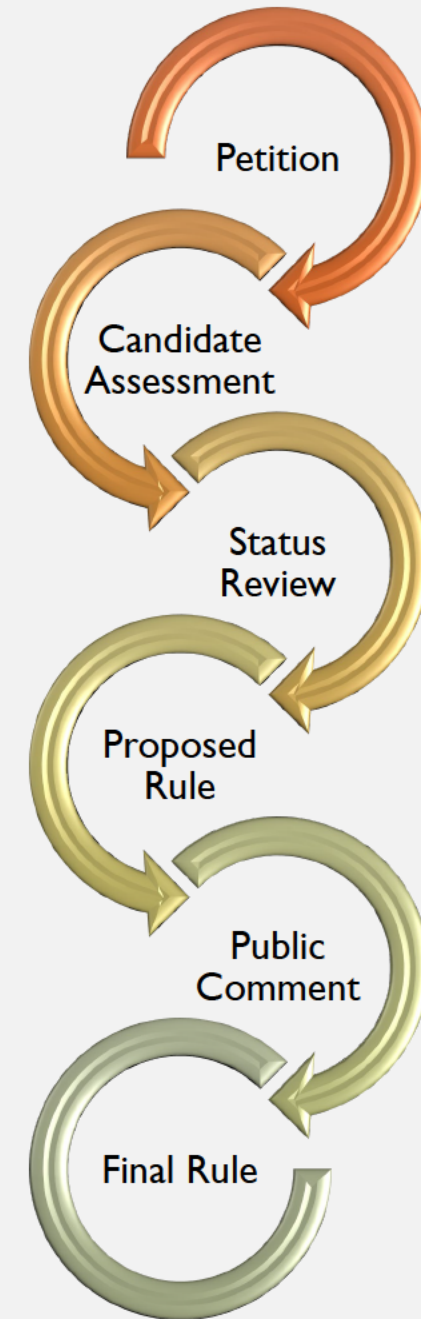
- ENDANGERED SPECIES ACT (ESA) -

- Enacted in 1973 to prevent loss or harm of endangered and threatened species and to protect the species' habitat.
- Provides legal protection to plants and animals that are defined as threatened or endangered.
- The prohibitions of Section 9(a)(1) of the ESA, make it illegal for any person subject to the jurisdiction of the U.S. to take endangered wildlife within the U.S. or on the high seas.



## ESA LISTING PROCESS

Listing a species under the ESA involves several steps







# Candidate Species

## Section 4 of the Endangered Species Act

### What are candidate species?

Candidate species are plants and animals for which the U.S. Fish and Wildlife Service (FWS) has sufficient information on their biological status and threats to propose them as endangered or threatened under the Endangered Species Act (ESA), but for which development of a proposed listing regulation is precluded by other higher priority listing activities. The current list of FWS candidate species is available at <https://ecos.fws.gov/ecp/report/candidate-species>. The National Marine Fisheries Service, which has jurisdiction over most marine species, also maintains a list of "species of concern" for which more information is needed before they can be proposed for listing.

### What protection does the ESA provide to candidate species?

Candidate species receive no statutory protection under the ESA. The FWS encourages cooperative conservation efforts for these species because they are, by definition, species that may warrant future protection under the ESA.

### How do species become candidates?

Identification of potential candidates is a cooperative effort. The FWS endangered species specialists work closely with staff from other FWS resource programs as well as representatives of other federal and state natural resource agencies, local and tribal governments, business and industry, academia, conservation organizations, and other private interests to identify potential candidate species. NatureServe (<https://www.natureserve.org/explorer/>), working in cooperation with State Natural Heritage programs, ranks species status at state, national, and global levels based on their relative imperilment. This is also an important resource for identifying potential candidate species.

When sufficient information is developed to make well documented, biologically sound determinations about

for listing under the ESA. The FWS Regional Offices then provide recommendations for additions to the candidate list to the FWS Director, whose concurrence is necessary before a species becomes an official candidate species. Candidate species are assigned a listing priority from 1 to 12 based on the magnitude of threats they face, the immediacy of threats, and their taxonomic uniqueness (for example, full species have higher priority than subspecies). The species' listing priority dictates the relative order in which proposed listing rules are prepared, with the species at greatest risk (listing priority 1 through 3) being proposed first. Species may also be placed on the candidate list through the petition process (<https://www.fws.gov/endangered/what-we-do/listing-petition-process.html>)

### How does the public know what species are candidates for listing?

The FWS annually publishes a Candidate Notice of Review (CNOR) in the Federal Register that provides an updated list of plants and animals native to the United States that are regarded as candidates for possible listing. While there is no requirement under the ESA to publish such a list, we believe that it is important to advise other federal agencies, state and tribal governments, local governments, industry, and the public of those species that are at risk and may warrant ESA protection. Advance notice of potential ESA listings can assist environmental planning efforts allowing resource managers to alleviate threats and thereby possibly remove the need to list these taxa. The current CNOR can be viewed at <https://www.fws.gov/endangered/what-we-do/cnor.html>.

### What is the advantage of conserving species that are already candidates?



Striped newt.

Photo: Patience USFWS

of endangered species requires a means of addressing species that have not yet been listed but face immediate, identifiable threats. Early conservation maximizes management options for landowners and for the species, minimizes the cost of recovery, and reduces the potential for restrictive land use policies that may be necessary in the future. Addressing the needs of species before the regulatory requirements associated with listed species come into play often allows greater management flexibility to stabilize or restore these species and their habitats. Additionally, as threats are reduced and populations are increased or stabilized, priority for listing can be shifted to those species in greatest need of the ESA's protective measures. Ideally, sufficient threats can be removed to eliminate the need for listing.

The FWS offers technical expertise and provides funding for conservation of candidate and other species at-risk. For more information, visit <https://www.fws.gov/endangered/what-we-do/how-you-can-help.html>.

**U.S. Fish and Wildlife Service  
Ecological Services Program  
5275 Leesburg Pike  
Falls Church, VA 22041  
703-358-2171  
<http://www.fws.gov/endangered/>**

## CANDIDATE SPECIES

- Plants and animals for which the U.S. Fish and Wildlife Service (USFWS) has enough information to propose them as threatened or endangered under the ESA, but listing is currently precluded.
- Implementing conservation efforts before species are listed increases the likelihood that more cost-effective conservation options are available, and conservation efforts will succeed.

## CANDIDATE CONSERVATION AGREEMENT WITH ASSURANCES (CCAA)

Addresses property owners' concerns about potential land use restrictions that could occur if a species becomes listed under the ESA .

Voluntary agreement that provides incentives for non-federal landowners to conserve candidate and other unlisted species.

For the length of the agreement, landowners agree to undertake specific activities that address the identified threats to the DSL.

Texas Conservation Plan  
for the  
Dunes Sagebrush Lizard  
(*Sceloporus arenicolus*)

Developed in consultation with:  
U.S. Fish and Wildlife Service – Southwest Region  
U.S. Department of Agriculture Natural Resources Conservation Service  
Texas A&M University  
Texas Comptroller of Public Accounts  
Texas Interagency Task Force on Economic Growth and Endangered Species  
Texas Department of Agriculture  
Texas Parks and Wildlife Department  
Railroad Commission of Texas  
University of Texas System, University Lands  
Texas Farm Bureau  
Texas Oil & Gas Association  
Texas Royalty Council  
Texas & Southwestern Cattle Raisers Association  
Texas Wildlife Association  
Texas Association of Business

February 13, 2012





## DSL BACKGROUND

Occurs in the sand dune complexes associated with shinnery oak in the Permian Basin of West Texas and Eastern New Mexico.

A Candidate Species currently proposed for Federal listing under the ESA throughout its range in Texas and New Mexico.

In Texas, the species is known or believed to occur in **Andrews, Crane, Ector, Gaines, Ward and Winkler counties.**

<https://ecos.fws.gov/ecp/species/663>



## PROPOSED RULE TO LIST THE DSL

- USFWS found that listing the species as an Endangered Species was warranted.
- USFWS determined that the designation of critical habitat was prudent but not determinable at the time of the proposed rule to list the species.
- Critical habitat can be designated outside the geographical area occupied by the DSL at the time it is listed.



<https://www.federalregister.gov/documents/2023/07/03/2023-13859/endangered-and-threatened-wildlife-and-plants-endangered-species-status-for-the-dunes-sagebrush>



# DSL PREVIOUS FEDERAL ACTIONS

12/30/1982

USFWS published CNOR classifying DSL as Category 2 candidate species *(sufficient data on biological vulnerability and threats were not available to support proposed rule)*

USFWS published CNOR reclassifying DSL as Category 3C candidate species

09/18/1985

11/21/1991

USFWS did not list DSL as a candidate species in subsequent CNOR *(Category C3 included taxa that were considered more abundant or widespread than previously thought or not subject to identifiable threats)*

USFWS CNOR included DSL as a Category 2 candidate species indicating that its conservation status had changed

11/15/1994

02/22/1996

USFWS published CNOR that announced changes to the way the USFWS identifies candidates for listing under the Act; including notice of intent to discontinue maintaining a list of Category 2 species.

USFWS published CNOR placing DSL on the candidate list with a listing priority of 2 *(meaning magnitude and immediacy of threats to the species is high)*

10/30/2001

06/06/2002

USFWS received a petition from the Center for Biological Diversity to list the DSL

U.S. District Court for the District of Oregon found the USFWS resubmitted petition finding for the DSL was not sufficient. USFWS court ordered to publish updated findings for the species within 180 days of the order.

06/21/2004

12/27/2004

USFWS published 12-mo finding that listing of the DSL was warranted, but precluded by higher priorities and remained on the candidate list with an LPN of 2

USFWS proposed to list the DSL as Endangered [12/14/10 & 4/7/11 comment periods, followed by 6-mo extension] *(Substantial disagreement on sufficiency or accuracy of available data)*

12/14/2010

02/24/2010

USFWS reopened comment period on proposed listing, announcing availability of and requested comments on likelihood of implementation and effectiveness of conservation measures in a signed conservation agreement in NM & TX

USFWS withdraws proposed rule to list DSL following comment period with a conclusion that the threats were no longer significant based on analysis of current/future threats and conservation efforts in NM & TX

06/19/2012

06/01/2018

USFWS receives another petition from Center for Biological Diversity and Defenders of Wildlife requesting DSL be listed as endangered or threatened and critical habitat be designated

USFWS published 90-day finding determining petition presented substantial scientific or commercial info indicating listing is warranted

07/16/2020

05/19/2022

USFWS received a complaint from the Center for Biological Diversity alleging failure to issue a timely 12-mo finding. To settle the complaint, USFWS agreed to publish a 12-mo finding by 06/29/23.

## 2023 DSL PROPOSAL TO LIST TIMELINE

- **07/03/2023** – USFWS published *Proposed Rule to list the DSL* in the Federal Register and USFWS Species Status Assessment (SSA) for the DSL. This document served as a 12-month finding for the 2018 petition and opened a 60-day comment period, which seeks input on the proposal to list the DSL.
- **07/31/2023** – USFWS held a virtual public informational session and public hearing.
- **08/30/2023** – USFWS published a *30-day extension on the public comment period* in the Federal Register.
- **10/02/2023** – USFWS extended public comment period closed

## Species Status Assessment for the Dunes Sagebrush Lizard



Photo Credit: U.S. Fish and Wildlife Service

Version 1.2

April 2023

U.S. Fish and Wildlife Service

Southwest Region

Albuquerque, NM





- UPCOMING -  
**2024**  
**DEADLINES**  
DSL PROPOSAL TO LIST

- **06/03/2024** – ACF  
deadline for accepting  
enrollment in the TCP
- **07/03/2024** – USFWS  
deadline for final listing  
determination on the  
proposal to list the DSL as  
Endangered.
- **07/03/2025** – USFWS  
deadline of additional year  
to publish critical habitat  
designation.





## TEXAS CONSERVATION PLAN BACKGROUND

- Finalized and approved by USFWS February 2012
- A CCAA with a goal to provide a conservation benefit to the DSL.
- USFWS transferred the Section 10 Permit for the DSL to ACF on September 20, 2020, and ACF accepted the transferred TCP Permit via signature on October 19, 2020.
- The term of the TCP Permit is 30 years and set to expire or be renewed on February 17, 2042.



# AMERICAN CONSERVATION FOUNDATION

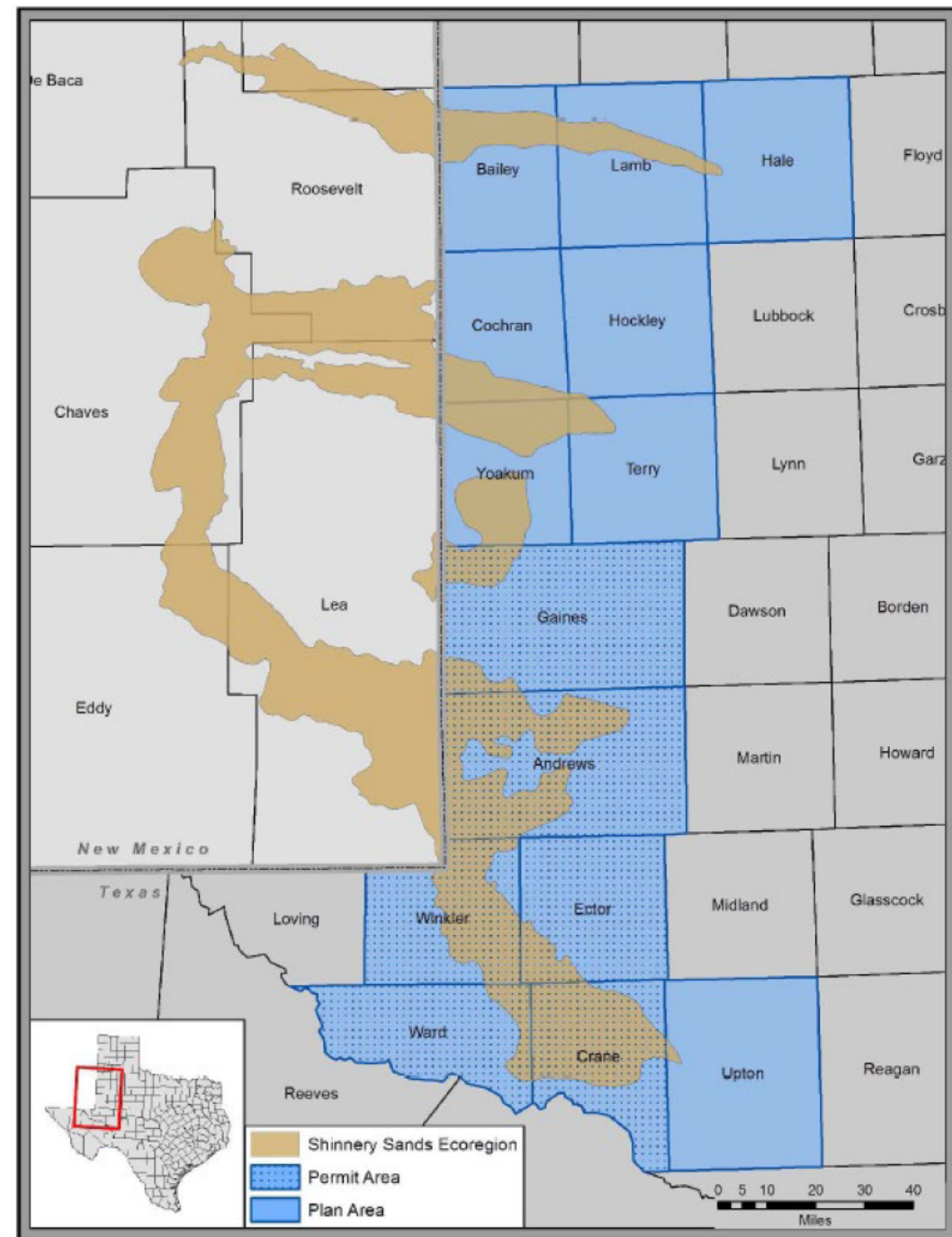
AMERICAN  
CONSERVATION  
FOUNDATION, INC.

- Established as a Texas based non-profit organization in August 2019.
- Gene Richardson serves as President and Treasurer of ACF. A Board of Directors was established to include Shawn Wade, serving as Secretary, and Board Members Gary Austin and Richard Brantley.
  - Purpose of ACF: to contribute to the conservation of native ecosystems in a manner that incentivizes participation by private landowners and promotes economic development. ACF understands the importance of balancing these interests.
  - Mission of ACF: to investigate, implement, and promote conservation strategies that are science-based, responsible, grounded in common sense, and durable for the benefit of species and habitat.

<https://www.ac-foundation.com/>

# ENROLLMENT IN THE TCP

- Private entities conducting activities in the Permit Area may voluntarily choose to participate in the TCP by signing a Certificate of Inclusion (CI) under the CCAA to avoid or minimize and mitigate impacts to Hibbitts DSL habitat that may occur as a result of their operation's Covered Activities







## TCP ENROLLMENT PROCESS

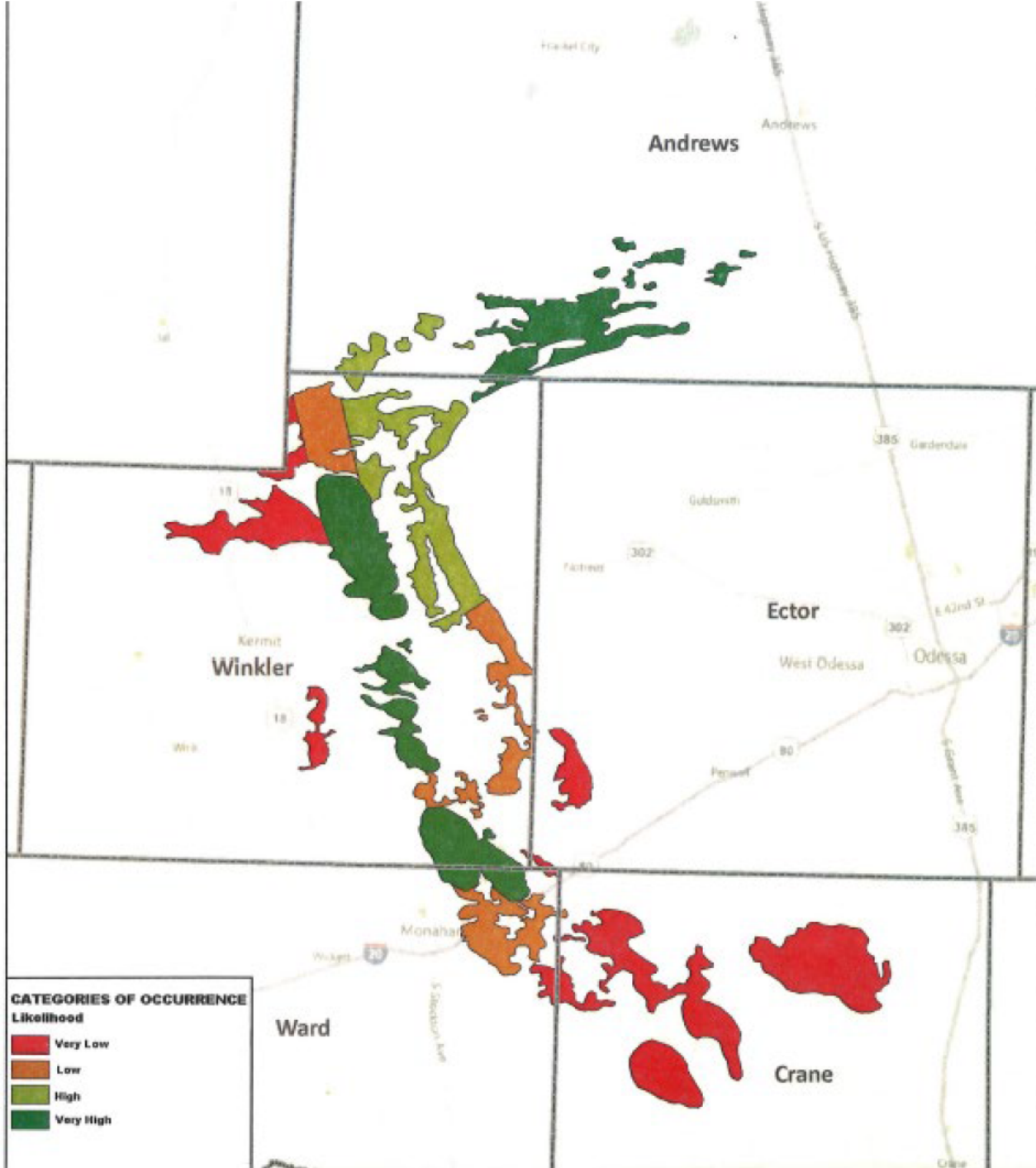
- Enrollment in the TCP is currently OPEN through June 3, 2024
- Those interested in enrolling should contact ACF via our website or email with their desire to obtain additional information and/or enroll.
- If interested in enrolling, you will complete and return the CI and Management Plan and provide ACF with a shapefile of the acreage you wish to enroll.

<https://www.ac-foundation.com/contact>

## DSL MAPS/MODELS

**The TCP is based on the DSL Likelihood of Occurrence Map created by Toby Hibbitts of Texas A&M**

- DSL Habitat is classified into four approximated gradients of likelihood of DSL occupancy.
- USFWS expressed interest in discussing mapping DSL habitat to ensure take coverage is based on the best available data.
- ACF contracted with Texas A&M AgriLife Research of the Texas A&M University System (TAMU) for the development of a spatially explicit habitat model for the DSL. This model was developed for ACF to be scientifically rigorous and defensible, representing the best available methodology to determine DSL habitat suitability and has been peer reviewed and published.

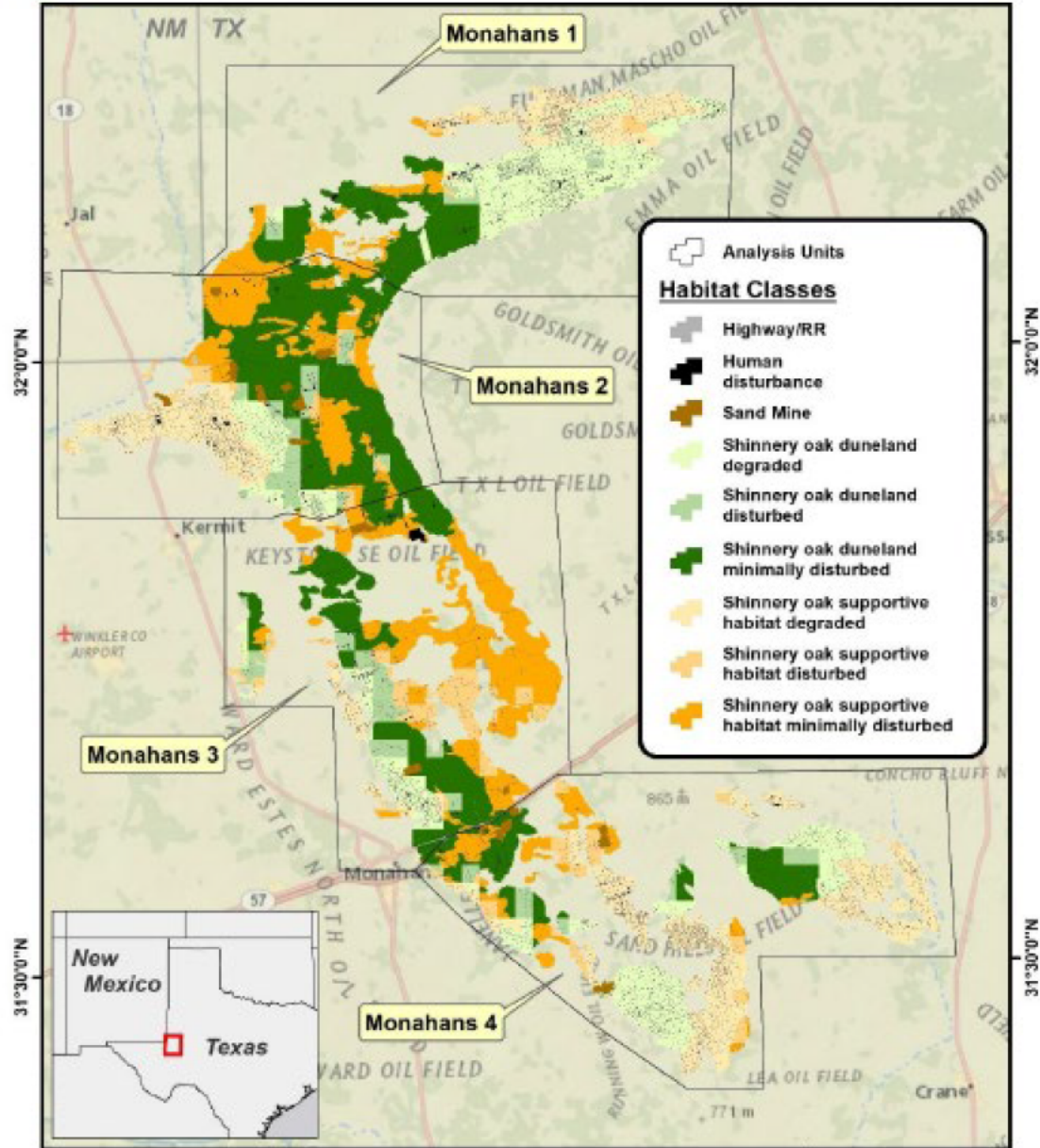




U.S. Fish & Wildlife Service

**Dunes Sagebrush Lizard (*Sceloporus arenicolus*)**  
**Habitat: Current Conditions**

Texas



## DSL MAPS/MODELS CONT.

- USFWS posted the Species Status Assessment (SSA) for the DSL to be used to inform the listing determination for the DSL.
- The USFWS DSL SSA included a map of Texas DSL habitat of both current conditions; and under future projections with outlines for the 4 Analysis Units used to describe the condition of the DSL in the Monahans Representation Units.





## CERTIFICATE OF INCLUSION (CI)

**Outlines the requirements of  
Participants in the TCP,  
including:**

- COVERED ACTIVITIES
- CONSERVATION MEASURES
- RESPONSIBILITIES
- ASSURANCES
- FEES AND ASSESSMENTS
- TRANSFERS AND ADDITIONS



# REMINDER



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**THANK YOU!**