

### **3.4 Endangered Species Act**

The Federal Endangered Species act and similar State legislation require the determination that no threatened or endangered species will be affected adversely by proposed activities. The permit applicant must certify, either through a biological assessment or through a literature review, that no such species are present in the area of the unit. If such species are present, a plan must be developed to minimize any effects on those organisms.

In the case of a unit to be located along a migratory pathway of some animal, similar options are available. If, for example, a unit were to be located along a migration pathway used by elk, the permit

application should include a discussion of additional physical barriers that would exclude elk from the area and perhaps, a discussion of schedule modifications of the operating schedule of the unit to account for their migratory habits.

Dealing with an environmental impact statement (EIS) is far more complicated than handling any of the circumstances described earlier. If, based on the EIS, an applicant has not been able to obtain a finding of no significant impact (FONSI) or a categorical exclusion for the operation, the terms of the EIS are likely to add a new level of complexity to the application. The findings of any required EIS, and the mitigation and monitoring plans included in it, should be included with the permit application as an appendix. The permit applicant should discuss explicitly how the mitigation and monitoring plans will be implemented and how implementation will affect overall operations. Once again, the permit writer must evaluate the information against the mitigation and monitoring plans and determine whether it meets those requirements and whether the requirements cause unintended problems in the operation of the unit.

*Refer to the [Specific Technical Issues](#) presentation (slides 65-68) from the February 2002 EPA Region 4 RCRA Miscellaneous Units Permitting and Compliance Training for additional information on Endangered Species issues.*