

**DATA LICENSE AGREEMENT BETWEEN**  
**NatureServe**  
**AND**  
**The Department of Transportation's Pipeline and Hazardous Materials Safety Administration**

The Pipeline and Hazardous Materials Safety Administration's (PHMSA) mission is "to protect people and the environment by advancing the safe transportation of energy and other hazardous materials that are essential to our daily lives." Under Final Rule 2137-AE36 (Pipeline Safety: Applying Safety Regulations to All Rural Onshore Hazardous Liquid Low-Stress Lines; October 1, 2011) hazardous liquid pipeline operators are required to perform risk assessments in collaboration with federal and state agencies for pipelines located in or within a quarter mile of an Unusually Sensitive Area (USA). USAs are defined in 49 CFR Part 195 as 'a drinking water or ecological resource area that is unusually sensitive to environmental damage from a hazardous liquid pipeline release.' This risk assessment process using USAs ensures that pipeline operators develop prevention, mitigation, and response measures in areas with drinking water resources and ecologically sensitive areas.

In 2000, PHMSA (formerly OPS) led an effort to make USA information available to hazardous liquid pipeline operators through their online National Pipeline Mapping System ("NPMS"). USAs include ecological areas that are susceptible to permanent or long-term damage from a hazardous liquid release ("EcoUSAs"). EcoUSAs include areas with critically imperiled species, multi-species assemblages, and migratory waterbird concentration areas (defined in 49 CFR Part 195). The original EcoUSA data layers were developed from several sources with the majority coming from NatureServe and its network programs across the U.S. (hereinafter "the NatureServe Network").

The NatureServe Network, with programs in all 50 states, have been collecting and managing information on the locations and conditions of imperiled species and ecological communities for more than forty years and have collectively created the most comprehensive, standardized dataset of imperiled species and ecological systems that exists for the entire U.S. and Canada. This data is constantly being refined and updated by the NatureServe Network using scientifically-driven standards and methods utilized across the network.

Recognizing the value of NatureServe's information and the fact that the current EcoUSA data layer is out of date, PHMSA is committed to updating and providing the best available data on ecologically sensitive areas to pipeline operators to avoid and mitigate potential impacts by hazardous liquid pipeline releases. With access to a more up-to-date and comprehensive version of the EcoUSA data layer for the U.S., PHMSA will vastly improve its ability to support hazardous liquid pipeline operators in the development of effective integrity management plans as mandated by Congress, thereby improving the protection of unique and important places along pipelines that are home to rare and imperiled species, and ecological communities.

This License Agreement provides PHMSA and hazardous liquid pipeline operators with access to an updated version of the EcoUSA that includes all available data outlined in 49 CFR Part 195, and is created using current, comprehensive, and standardized data on imperiled plants, animals, and ecosystems for the U.S. The Licensed Dataset is provided to PHMSA under this License Agreement by NatureServe, a private, non-profit corporation organized under the laws of the District of Columbia, with offices at 4600 N. Fairfax Drive, 7<sup>th</sup> Floor, Arlington, VA 22203.

I. TERM OF LICENSE AGREEMENT

This agreement shall start on September 30, 2016 (or upon delivery of data to the PHMSA) and shall expire on September 30, 2017 (or 12 months from delivery of data to the PHMSA), whichever is later.

II. DATA COVERED BY THIS LICENSE AGREEMENT

The NatureServe Network's data on the status and location of species and ecological systems in the U.S and Canada, or Multi-Jurisdictional Dataset ("MJD"), is aimed at improving conservation planning and actions. Use of the MJD is governed by Data Sharing Agreements between NatureServe and its network programs.

The portion of the MJD that is governed by this License Agreement includes the status and location data for species and ecological systems that occur within the U.S., hereinafter referred to as the "Licensed Dataset." Using the MJD and the criteria defined in 49 CFR Part 195, NatureServe will develop an updated EcoUSA geospatial data layer.

III. ACCESS TO THE DATA

- A. NatureServe will provide PHMSA with one year of access to an EcoUSA geospatial data file for the U.S. Attachment 1 outlines the data that will be included in the EcoUSA data file. NatureServe will work with PHMSA to support integration of the Licensed Dataset into the PHMSA's NPMS (restricting the EcoUSA data to internal PHMSA use or to use by hazardous liquid pipeline operators), and provide metadata that adheres to Federal Geographic Data Committee (FGDC) metadata standards.
- B. This license entitles PHMSA employees and U.S. hazardous liquid pipeline operators who have completed the NatureServe Data Use training, as outlined below, to have access to the Licensed Dataset. Those employees or operators with access to the Licensed Dataset are referred to as the "Data Users." PHMSA is responsible for assuring that access to the Licensed Dataset is limited to the Data Users as defined in this License Agreement.
- C. All Data Users are required to complete NatureServe's online Data Use Training prior to receiving access to the Licensed Dataset. As part of the Data Use Training, Data Users will be required to review and agree to the terms of the License Agreement. NatureServe will provide PHMSA with a list of the Data Users who have completed the training. The training requires approximately one hour to complete and is available at:  
<http://www.natureserve.org/conservation-tools/natureserve-learning-center/fundamental-skill-building/data-use-training>.
- D. PHMSA is responsible for ensuring that all PHMSA employees complete the NatureServe Data Use Training before accessing the Licensed Dataset and use the Licensed Dataset as outlined in this License Agreement.

- E. PHMSA is responsible for ensuring that all hazardous liquid pipeline operators complete the NatureServe Data Use Training before being given access to the Licensed Dataset. As part of the online Data Use Training, NatureServe will require that pipeline operator's review, and agree to the terms of this License Agreement, and will hold the pipeline operators (not PHMSA) liable for any inappropriate use of the Licensed Dataset by hazardous liquid pipeline operators.
- F. Although NatureServe will provide the Data Users with all necessary data, metadata, and support necessary to support proper use of the Licensed Dataset, this does not mean that NatureServe or its network programs are in agreement with the Data User's interpretation of the data.

#### IV. DATA USE RESTRICTIONS

Use of the Licensed Dataset by the Data Users shall be governed by the following provisions:

- A. The Licensed Dataset provided by NatureServe will be used by the Data Users for evaluating, refining, and implementing hazardous liquid pipeline integrity management plans as mandated by Congress, and described in the Notice of Proposed Rulemaking (NPRM) (71 FR 52504; September 6, 2006), or for any other activity that supports the protection of unique and important places along pipelines that are home to rare and imperiled species, and ecological systems.
- B. In all cases where conservation, land-use, or management decisions are made using the Licensed Dataset, and there is the potential for local impacts to species and ecological systems, PHMSA will recommend that hazardous liquid pipeline operators consult with the relevant NatureServe network programs to ensure that they have access to any additional information and expertise. To contact programs directly, see: <http://www.natureserve.org/natureserve-network>.
- C. NatureServe grants to the Data Users during the term of this agreement a limited, nonexclusive, right of access to the Licensed Dataset. The dataset is non-transferable. The Data Users shall in all respects treat the dataset as the proprietary information of NatureServe and contributing network programs in accordance with all procedures reasonably necessary to protect their proprietary rights in the data and information. The Licensed Dataset may only be accessed by Data Users, as defined above.
- D. Data Users may develop and share products derived from the Licensed Dataset such as maps, reports, analyses, and assessments, internally with other PHMSA employees and PHMSA contractors provided all such data, documents, reports, maps or other products (in paper, hardcopy, electronic, or any formats) are marked "Confidential and Proprietary -- For Internal Use Only" and "If access to this data is requested by any party other than PHMSA and hazardous liquid pipeline operators who have taken NatureServe's Data Use Training, those parties should be directed to NatureServe at: [ProductsandServices@natureserve.org](mailto:ProductsandServices@natureserve.org)." The only exception to these requirements is when such products display or describe species at geographic scales that are not sensitive as defined in section IV. D. below.

- E. If Data Users develop products derived from the Licensed Dataset and want to share these products with external parties (i.e., parties who have not taken the Data Use Training, and are not PHMSA or hazardous liquid pipeline contractor employees), the Data Users shall ensure that all such products shared in any form present the data in a way that will not compromise any imperiled species. The following are allowable for sharing with external parties:
- a) Static display of mapped data at a fixed scale of 1:5,000,000 or lower resolution.
  - b) Static display or description of known presence/absence of individual species or groups of species at the scales of: U.S. county, 8-digit Hydrologic Units, or any type of grid cell units larger than or equal to 250 square miles in area.

Examples of allowable external products are shown in Attachment 2.

Other than the types of products expressly described above, Data Users shall not distribute any products derived from the Licensed Dataset to outside parties without first consulting with, and obtaining written permission from, NatureServe. The only allowable exception to these guidelines is when data included in the Licensed Dataset is otherwise obtained from a source independent from the NatureServe Network.

- F. No interest whatsoever is conveyed to the Data Users in right, title and interest in the Licensed Dataset, the data, the information and all copyrights (and renewals thereof) secured therein. All publication, dissemination and other rights in the Licensed Dataset are reserved to NatureServe in all languages, formats and throughout the world for the sole and exclusive use or any other disposition by NatureServe or their assignees or grantees at any time and from time to time without any obligation or liability to any User.
- G. The Licensed Dataset, in whole or in part, is not to be distributed to or accessed by other agencies, organizations, companies, or individuals that are not defined as Data Users within this Agreement without prior written consent of NatureServe. Requests received by the Data Users from other groups, organizations, or individuals for electronic or paper copies of lists, or other reports, or portions of the data thereof, should be directed to NatureServe's Products and Services Team at NatureServe at 4600 N. Fairfax Drive., 7<sup>th</sup> Floor., Arlington, VA 22203; 703-908-1800 (phone); [ProductsandServices@natureserve.org](mailto:ProductsandServices@natureserve.org) (e-mail); <http://www.natureserve.org/conservation-tools/custom-data-services> (website) .
- H. License to use this dataset expires on September 30, 2017, (or 12 months from the date the data were made available to the Data Users), whichever is later. Upon expiration of the Licensed Dataset, the Data Users will delete all copies of the Licensed Dataset from their active computer systems, retaining an archived version of the Licensed Dataset, if necessary, for the purposes of completing work begun during the license period, supporting the decisions made or analyses done during the term of the License, or to comply with applicable federal record keeping laws or requirements. The archived dataset cannot be used to support decisions or analyses done after the expiration of the Licensed Dataset. If all parties agree, the Data Users have the option to extend use of the Licensed Dataset after this time by amending this license and receiving an updated version of the Licensed Dataset from NatureServe. NatureServe will extend the license period for up to 90 days, if PHMSA is actively pursuing renewal of the Data License Agreement.

- I. The Data Users will provide appropriate citation and/or acknowledgment on all products, publications or media announcements derived from the Licensed Dataset, whether for internal or external use. The following citation and acknowledgement statement should be used on publications or other products. As appropriate, NatureServe's logo should also be used on publications or other products where NatureServe contributed data or information.

Citation (used when data are included in a publication): NatureServe <year>. NatureServe. Arlington, Virginia. U.S.A.

Data source statement (used under graphic or map): Data Source: NatureServe and its network programs.

Acknowledgement Statement (included on data products as appropriate):

This information is provided by NatureServe ([www.natureserve.org](http://www.natureserve.org)) and its network programs, a leading source of information about rare and endangered species, and threatened ecosystems.

Warranty Statement (included on data products as appropriate):

The absence of data in any particular geographic area does not necessarily mean that species or ecological communities of concern are not present. (Often used on maps when brief text is needed).

OR

These data are dependent on the research and observations of many scientists and institutions, and reflect our current state of knowledge. Many areas have never been thoroughly surveyed, however, and the absence of data in any particular geographic area does not necessarily mean that species or ecological communities of concern are not present. These data should not be regarded as a substitute for on-site surveys required for environmental assessments. If ground-disturbing activities are proposed on a site, the appropriate state natural heritage program(s) or conservation data center(s) should be contacted for a site-specific review of the project area. For contact information, see the NatureServe web site at <http://www.natureserve.org/natureserve-network>.

- J. The data disclosure restrictions set forth above shall remain in effect after the expiration of this Agreement.
- V. WARRANTIES
  - A. NatureServe has received the required consent from the cooperating network programs to license to the Data Users access and use of the Licensed Dataset.
  - B. NatureServe shall have no liability for any claim of infringement or rights by third parties based on any use of the Licensed Dataset in combination with programs, software, hardware, or equipment not designated by NatureServe, without prior written approval by NatureServe, if such infringement could have been avoided had the Licensed Dataset not been so used.

- C. NatureServe shall have no liability or responsibility to the Data Users, or any other person or entity with respect to any liability, loss, or damage caused or alleged to be caused directly or indirectly by the Licensed Dataset, including but not limited to any interruption of service, loss of business, anticipatory profits or indirect, special, or consequential damages resulting from the use or operation of the Licensed Dataset.
- D. NatureServe warrants that the data in the Licensed Dataset has been accurately compiled, and reviewed to ensure compliance with quality control standards.

VI. TERMINATION

- A. In the event that the Data Users breach any one or more of its obligations under this License Agreement, NatureServe may, upon their election and in addition to any other remedies that they may have, at anytime terminate the License Agreement with no less than fifteen (15) days prior written notice to the Data Users specifying any such breach, unless within the period of such notice all breaches specified therein shall have been remedied to the satisfaction of NatureServe.
- B. Upon termination of this license prior to its expiration, the Data Users must delete the Licensed Dataset from their active computer systems, retaining an archived version of the Licensed Dataset, if necessary, for the purposes of supporting previous decisions and analyses, or to comply with applicable federal record keeping laws or requirements. Upon termination of this license the Data Users shall not generate new maps, risk assessments, data analyses or other products from the Licensed Dataset. NatureServe may take whatever steps it deems appropriate to terminate all active use of the Licensed Dataset.

VII. PROTECTION OF RIGHTS

- A. The Data Users agree that they shall not use the Licensed Dataset except as authorized herein.
- B. The Data Users agree to protect the rights of NatureServe to the Licensed Dataset.
- C. The obligations of the Data Users and their respective employees and agents shall survive and continue after the expiration of the License Agreement or termination of rights. Such obligations shall not extend to any data, information or technical data relating to the Licensed Dataset which is available to the general public or which later becomes available to the general public by acts not attributable to the Data Users, or their employees, or agents.

VIII. FEES

- A. PHMSA has provided financial assistance per the terms under <insert name and number of contract>.

IX. OTHER PROVISIONS

- A. The construction and performance of this license shall be governed by the laws of the Commonwealth of Virginia, U.S.A. and applicable U.S. federal law (or other laws as appropriate).

- B. This License Agreement may be modified or amended by written agreement of NatureServe and PHMSA.
- C. As time permits, Data Users shall communicate to NatureServe or its contributing network programs regarding errors or omissions that they may find in the Licensed Dataset for the purpose of improving the quality of the NatureServe Network data.

## Attachment 1

The EcoUSA geospatial data file will be developed using Precise Element Occurrences<sup>1</sup> and Source Features<sup>2</sup> data that are developed and managed by the NatureServe Network. This EcoUSA file will include the following data types (as defined in 49 CFR Part 195), and include required attribute data.

**1. An area containing a critically imperiled species or ecological community**

Critically Imperiled Species Data

NatureServe will develop EcoUSAs using the spatially explicit locations of species that have been assessed by the NatureServe Network as having a Global Conservation Assessment Rank of G1/T1 (critically imperiled). This dataset is available through the NatureServe Biotics 5 system, and includes the area documented as being occupied by a critically imperiled plant or animal.

Critically Imperiled Community Data

NatureServe has mapped the locations of terrestrial ecosystems across the U.S., and completed conservation status assessments for these ecosystems. In addition, some state network programs have mapped critically imperiled ecological communities. NatureServe will develop EcoUSAs using these critically imperiled ecological communities from our network programs, as available, and critically imperiled ecosystems for the U.S.

**2. A migratory waterbird concentration area**

NatureServe will create EcoUSAs using data layers on migratory waterbird concentration areas as available from its own network programs, and as available from Ramsar at: [www.ramsar.org](http://www.ramsar.org), including Ramsar Sites or Western Hemisphere Shorebird Reserve Network sites designated as Hemispheric, International, and Endangered Species Reserves.

**3. An area containing imperiled species, threatened or endangered species, depleted marine mammal species, or an imperiled ecological community where the species or community is aquatic, aquatic dependent, or terrestrial with a limited range**

Imperiled, Threatened, or Endangered Species Data

NatureServe will develop EcoUSAs using the spatially explicit locations of species that have been assessed by the NatureServe Network as having a Global Conservation Assessment Rank of G2/T2, or listed under the U.S. Endangered Species Act as Threatened or Endangered, and have

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<sup>1</sup> Element Occurrence (or EO) means an area of land and/or water in which a species or natural community is, or was, present. An EO should have practical conservation value for the Element as evidenced by potential continued (or historical) presence and/or regular recurrence at a given location. Consistency in EOs throughout the range of an element is achieved through the application of standard minimum data criteria and rules of separation specific to that element or group of similar elements. Documentation on NatureServe's EO methodology standards is available at: <http://www.natureserve.org/conservation-tools/standards-methods/element-occurrence-data-standard>).

<sup>2</sup> A source feature is the initial mapped spatial component developed from a discrete unit of observation data. It is derived through a process that begins with an observed feature based on field survey information (small area, linear area, or large area); next, an observed feature is cartographically characterized as a conceptual feature (point, line, or polygon). A conceptual feature is then developed into a source feature according to the locational uncertainty associated with the underlying observation.



been determined to be aquatic, aquatic dependent, or terrestrial with a limited range (within a 5 square acre area). This dataset is available through the NatureServe Biotics 5 system, and includes the area documented as being occupied by an imperiled, threatened or endangered plant or animal, and selected based on the fact that it is aquatic, aquatic dependent, or terrestrial with a limited range (within a 5 square acre area).

#### Depleted Marine Species

NatureServe will develop EcoUSAs using data on depleted marine mammal areas as available from NOAA at: [www.nmfs.noaa.gov](http://www.nmfs.noaa.gov).

#### Imperiled Ecological Community Data

NatureServe has mapped the locations of terrestrial ecosystems (i.e., upland and wetland types) across the U.S., and completed conservation status assessments for these ecosystems. In addition, some state network programs have mapped imperiled ecological communities. NatureServe will develop EcoUSAs using these imperiled ecological communities from our network programs, as available, and imperiled ecosystems for the U.S. , and have been determined to be aquatic, aquatic dependent, or terrestrial with a limited range (within a 5 square acre area).

- 4. An area containing an imperiled species, threatened or endangered species, depleted marine mammal species, or imperiled ecological community where the species or community occurrence is considered to be one of the most viable, highest quality, or in the best condition, as identified by an element occurrence ranking (EORANK) of A (excellent quality) or B (good quality)**

NatureServe will develop EcoUSAs using the mapped locations of imperiled, threatened or endangered species that have been determined to be the most viable, or the highest quality or condition (EORANK = A or B) based on our EORANKs. In addition, as available NatureServe will develop EcoUSAs using data on imperiled ecological communities of high quality and/or viability from NatureServe's network programs.

- 5. Multi-species assemblage areas**

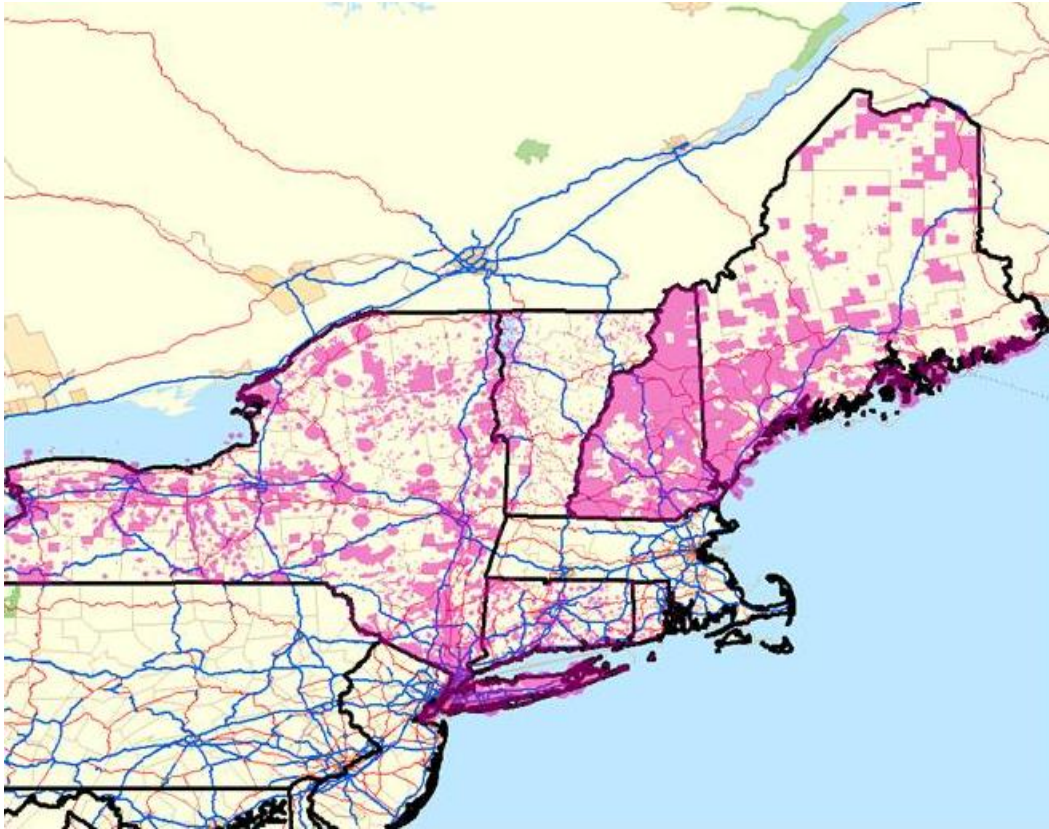
Using all the data summarized above, NatureServe will develop EcoUSAs for areas where three or more different critically imperiled or imperiled species or ecological communities, threatened or endangered species, depleted marine mammals, or migratory waterbird concentrations co-occur.

NatureServe will make every effort to provide precise species location data for all states, and can ensure provision of at least 45 of the 50 state imperiled species location datasets. Data for the Washington, D.C. area will be included as available from our Maryland and Virginia network programs. Some sensitive species locations may be fuzzed for some states and will be clearly documented in the metadata.

## Attachment 2

### Examples of Products Derived from Licensed Dataset that are Acceptable for External Publication

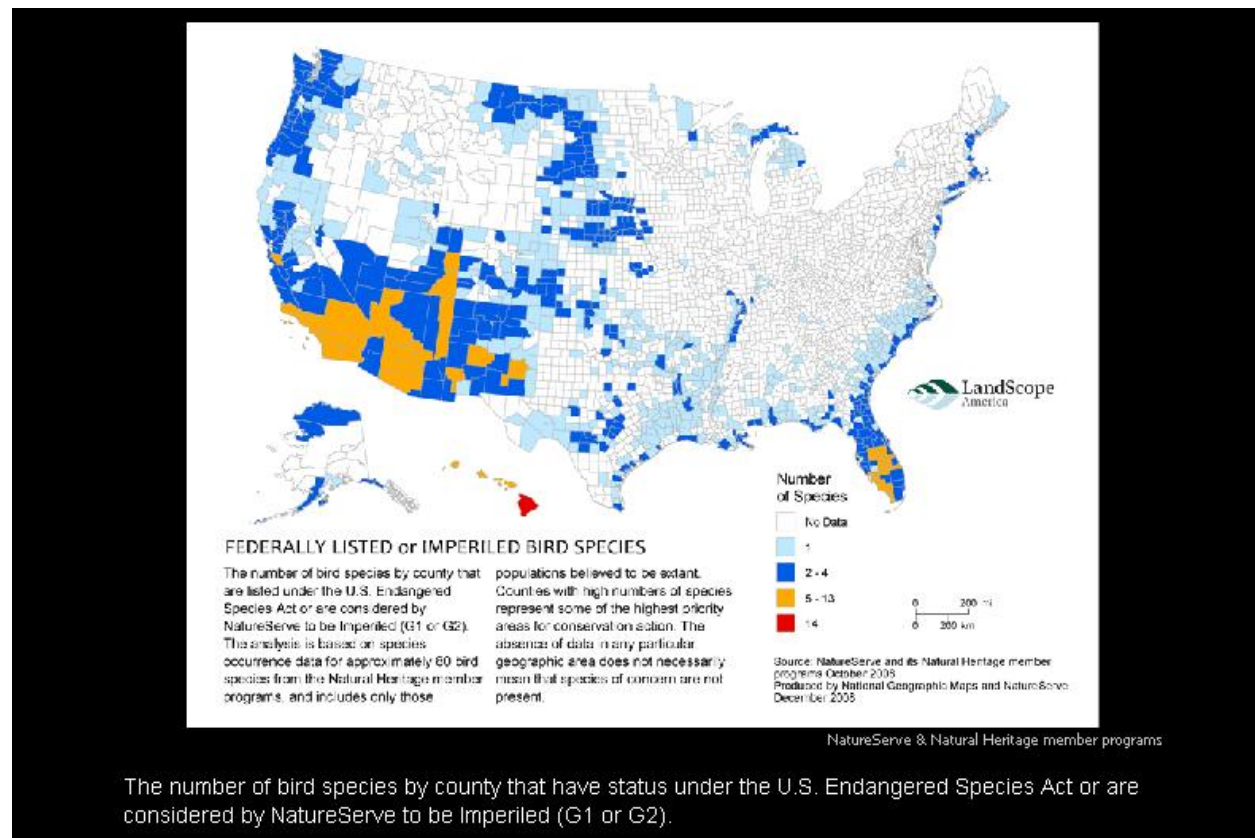
#### Example 1: “Dot” map of all species locations zoomed to 1:5,000,000 scale



*NatureServe 2010. NatureServe Central Databases, Arlington, VA, USA*

The map above (Example 1) shows all species with location data; however, it would be acceptable to display any group of species, or a single species, at this scale or coarser.

## Example 2: Known Presence by County



The map above (Example 2) shows the number of U.S. federally listed bird species in each county; it would also be acceptable to display the known presence of any group of species, or a single species, at the county scale, the scale of watershed (8-digit Hydrologic Unit), or the scale of any grid with units larger than or equal to 250 square miles in area.

Restrictions on external publication are to help ensure that the presentation of the data will not compromise any imperiled species or ecosystems. To determine if any other types of external data products, not expressly covered by this Data License Agreement, are allowable, please contact NatureServe's Products and Services Team at NatureServe at 4600 N Fairfax Drive, Arlington, VA 22203; 703-908-1800 (phone); [ProductsandServices@natureserve.org](mailto:ProductsandServices@natureserve.org) (e-mail); <http://www.natureserve.org/conservation-tools/data-maps-tools/custom-data-services> (website).