

ENVIRONMENTAL REVIEW GUIDELINES

In the interest of addressing your request and assisting you in complying with various environmental statutes, we offer the following technical assistance. In the sections that follow, we provide information that will enable you to thoroughly perform evaluations and refer you to sources from which you may obtain relevant information.

Federally Listed Species and Section 7 of the Endangered Species Act

Section 7(a)(2) of the Endangered Species Act (ESA) requires federal agencies to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any federally-listed threatened or endangered species or result in the destruction or adverse modification of designated critical habitat. Under the ESA, it is the responsibility of the federal action agency to determine the effects of their action on federally-listed species or designated critical habitat.

Section 7(a)(2) of the ESA also defines the section 7 consultation processes. Section 7 consultation is a cooperative effort carried out by the federal action agency and the Service to analyze the effects posed by proposed actions on listed species or critical habitat. The two major consultation processes are *informal* consultation and *formal* consultation.

Informal Consultation

The majority of section 7 consultations are informal consultations. Informal consultations are conducted to: 1) determine whether any listed, proposed, or candidate species or designated or proposed critical habitat occurs in the action area; 2) determine what effects, if any, the proposed action may have on these species or critical habitat; 3) explore measures that would remove or reduce any adverse effects; and 4) determine the need to enter formal consultation.

No Effect

A federal agency is **not required to consult** with the Service if it determines an action will not affect listed species or their critical habitat. Determinations should be made by qualified personnel with adequate information and expertise to properly evaluate potential effects to federally-listed species. This is important because “**no effect**” determinations do not provide exemption from section 9 of the ESA (which prohibits unauthorized take of federally-listed species). Any take that occurs due to the proposed action is a violation of the ESA and will be reported to the Service’s Division of Law Enforcement for investigation and possible prosecution. The federal action agency is ultimately responsible for ensuring compliance with the ESA and a complete record of all materials supporting the “**no effect**” determination should be maintained.

May Affect

A “**may affect**” determination is appropriate for those actions that pose **any** effects on listed species or designated critical habitat. Thus, a “**may affect**” determination should be made on proposed actions that may affect but are not likely to adversely affect, as well as those that may affect and are likely to adversely affect listed species. If the federal agency determines that the action is “**not likely to adversely affect**” listed species (*e.g.*, the effects are beneficial, insignificant, or discountable) a written request for concurrence should be submitted to the Service, along with a complete assessment package (see document titled “Project Description and Evaluation Request Guidelines” at

<<http://www.fws.gov/southwest/es/oklahoma/sect7.htm>>). The Service will review the information submitted and either provide concurrence, in which case no further consultation is required, or provide non-concurrence which requires further consultation. If the federal action agency determines that the action is “**likely to adversely affect**” listed species, and practicable ways to modify the action to remove the adverse effect (*e.g.*, changes in scheduling, engineering design, project location, etc.) can not be identified during informal consultation, then the federal action agency must request initiation of formal consultation.

Formal Consultation

After the federal action agency has determined the action is “**likely to adversely affect**” listed species, a request to initiate formal consultation is made in writing to the Service and includes a complete initiation package (see document titled “Project Description and Evaluation Request Guidelines” at <<http://www.fws.gov/southwest/es/oklahoma/sect7.htm>>). Up to that point, interactions between the federal action agency and the Service have been conducted under informal consultation. Formal consultation is initiated on the date the package is received, unless the initiation package is incomplete. If the package is incomplete, the Service notifies the federal agency of the deficiencies. If a complete package is submitted, the Service should provide written acknowledgment of the request within 30 working days. This written acknowledgment is not mandatory, but is encouraged so that there is documentation in the administrative record that formal consultation has been initiated.

From the date that formal consultation is initiated, the Service is allowed 90 days to consult with the agency and applicant (if any) and an additional 45 days to prepare and submit a biological opinion; thus, a biological opinion is submitted to the federal agency within 135 days of initiating formal consultation. The 90-day consultation period can be extended by mutual agreement of the federal agency and the Service; however, if an applicant is involved, the consultation period cannot be extended more than 60 days without the consent of the applicant. The extension should not be indefinite, and a schedule for completion should be specified.

More detailed information on the section 7 consultation process is available in the Service’s Endangered Species Consultation Handbook. This publication may be accessed at <<http://endangered.fws.gov/consultations/s7hndbk/s7hndbk.htm>>. Detailed information on Oklahoma’s threatened and endangered species, including counties of occurrence, may be obtained from our website at <<http://www.fws.gov/southwest/es/oklahoma/default.htm>>.

National Environmental Policy Act

The National Environmental Policy Act (NEPA) requires federal agencies to incorporate into their decision making processes, and carefully consider, the impacts of their proposed actions on the environment. Additionally, they are to submit their proposed project to other federal agencies and the public for review and comment. This is to ensure the public plays a role in the decision making process and in implementing that decision. The NEPA also established the Council on Environmental Quality (CEQ) to act in an advisory capacity for the President on environmental matters. CEQ’s Implementing Regulations for the NEPA (40 CFR 1500-1508) outline the requirements of these two tasks: decision making and review. Additional information is available on the CEQ NEPA net site at <<http://ceq.eh.doe.gov/NEPA/nepanet.htm>>.

In compliance with the NEPA, the action entity or their representative, not the Service, should determine if certain fish and wildlife resources, such as wetlands or federally-listed species, could be impacted by the proposed action. Projects that are determined to have little or no potential to individually or cumulatively affect the human environment are not required to prepare an environmental assessment (EA) or an environmental impact statement (EIS). **We do not need to evaluate projects for which no important fish and wildlife resource would be impacted.** You may proceed with these projects without first contacting the Service for approval. If it is determined that important fish and wildlife resources would be impacted by the action, an EA or EIS should be submitted to the Service for review. Remember, the ultimate responsibility to ensure compliance with the ESA and NEPA rests with the federal action agency and not the Service.

When submitting projects for our evaluation, please include all pertinent information related to the project, including information concerning the environmental resources proposed to be impacted. The document titled "Project Description and Evaluation Request Guidelines" provides a list of information generally required by the Service to fully evaluate most requests may be obtained from our website at <<http://www.fws.gov/southwest/es/oklahoma/sect7.htm>>. Incomplete requests likely will delay our evaluation. Normally, we require a minimum of 30 days to review and respond to requests. Complex projects may require additional review and response time.

Wetlands

The Service recommends impacts to wetland areas be avoided or minimized to the greatest extent practicable. We suggest contacting the U.S. Army Corps of Engineers (Corps) (918/669-7400) concerning any permit requirements associated with this project. Before submitting a permit application to the Corps, we recommend that all practicable alternatives be assessed and included in the permit application. We strongly recommend any proposed project utilize the least environmentally damaging alternative. The Service likely will seek mitigation for unavoidable impacts to important fish and wildlife habitats.

Information on the occurrence of wetlands within your project area may be obtained from the relevant National Wetlands Inventory (NWI) map. The Service has the primary federal responsibility for mapping and maintaining an inventory of wetlands in the United States. These NWI maps provide information on wetland type, location, and size and can assist you in analyzing the effect of your project. However, these maps may not necessarily provide information on wetlands regulated by the U.S. Army Corps of Engineers (Corps) under the Rivers and Harbors Act of 1899 and the Clean Water Act of 1977.

National Wetland Inventory maps can be acquired from the appropriate State distribution center, one of six USGS Earth Science Information Center regional offices, or by calling the USGS national toll-free number: 1-800-USA-MAPS. Maps can also be viewed at the Library of Congress and the Federal Depository Library System and, where available, downloaded cost-free through the NWI Home Page on the Internet at <<http://www.nwi.fws.gov>>. These maps also are available for viewing in this office, by appointment.

The six regional USGS Earth Science Information Centers provide online computer links to the NWI map database, which contains current information about the availability and production history of NWI maps and digital data. The appropriate Cooperator-Run State Distribution Center offers paper composites of the NWI maps and establishes their own pricing structure, product types and ordering procedures. The Oklahoma Water Resources Board, 3800 N. Classen, Oklahoma City, 73118 (405 530-8800) is the current NWI distribution center for Oklahoma.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) provides protection to migratory birds (any bird listed in 50 CFR 10.13) throughout the U.S., Canada, and Mexico. Under the MBTA, taking, killing, and possession of migratory birds is prohibited unless authorized by permit from the Secretary of the Interior. Permits authorizing incidental take are not issued. Executive Order 13186, "Responsibilities of federal Agencies to Protect Migratory Birds" was signed in January, 2001. This Executive Order was initiated as a national framework to address how federal agencies should address migratory bird conservation. The Executive Order requires all federal agencies whose activities may adversely affect migratory birds to develop a Memorandum of Understanding with the USFWS that shall promote the conservation of migratory bird populations. In accordance with the Executive Order, Section 3 (f), federal agencies are encouraged to begin implementing conservation measures set forth in the Executive Order while Memoranda of Understanding are being developed.

Floodplain Management

Floodplain information may be obtained from the Corps or is available for purchase from the Federal Emergency Management Agency (FEMA). Many commercial sources also offer FEMA floodplain maps. Information on floodplain areas will assist you in complying with Executive Order 11988 as part of your NEPA review. The Service cannot support projects that would have a significant adverse impact on floodplains.

Designated Wilderness Areas and Wildlife Preserves

With respect to officially designated wilderness areas or wildlife preserves, the Service manages a wide variety of "special designation areas" such as Wilderness Areas, Research Natural Areas, Refuges, Hatcheries, and Wetlands of International Significance. Currently, the Service manages some 76 wilderness areas encompassing roughly 20.7 million acres in 26 States. This total represents only about 20 percent of the National Wilderness Preservation System. Other agencies such as the U.S. Forest Service (USFS), Bureau of Land Management (BLM), National Park Service (NPS), and others may also manage officially designated wilderness areas or wildlife preserves. We suggest you also contact these agencies for relevant information. The general locations of the Service's National Wildlife Refuges and Fish Hatcheries are often indicated on many map products including topographical maps, county maps, and State Highway maps. Similarly, locations of State Parks and Wildlife Management Areas are often available on these types of maps. If more precise boundaries are needed, they may be obtained directly from the appropriate contact. A list of Oklahoma refuges and their contact information is provided on our regional website at <<http://southwest.fws.gov/refuges/okrefuges.html>>. Information on State Parks or Wildlife Management Areas should be obtained directly from the appropriate State agency.

Cultural Resources

The Service does not have expertise regarding, or exercise jurisdiction over, cultural resources unless those resources are located on lands owned or managed by the Service. Your principal point of contact should be your State Historic Preservation Office. The State Historic Preservation Office is generally responsible for the identification, evaluation, and protection of a State's prehistoric and historic cultural resources.

Wild and Scenic Rivers

The NPS exercises primary jurisdiction over the National Wild and Scenic Rivers system. However, the Service as well as the BLM and the USFS also are charged with protecting and managing the Nation's Wild and Scenic Rivers. A list, by State, of waters having this designation can be obtained at <http://www.nps.gov/rivers/wildriverslist.html>. Although there are currently no federally-designated wild or scenic rivers in Oklahoma, several such state designated rivers occur in Oklahoma. Your principal point of contact is the Oklahoma Scenic Rivers Commission. Relevant information can be obtained at <http://biosystems2.okstate.edu/scenic/>.