

Project Review

by the U.S. Fish and Wildlife Service



There are a number of federal laws that instruct the U.S. Fish and Wildlife Service (Service), as the nation's wildlife agency, to review various projects that are funded and/or authorized by the federal government. These laws recognize the importance of our nation's water, fish, wildlife, and plant resources as part of our national identity and consciousness; as our nation's natural resources; and as parts of healthy, functioning ecosystems that support life. They also recognize that for the long-term well-being of these natural resources, the federal government has a responsibility to minimize or eliminate negative impacts from the projects it funds or authorizes.

species or adversely modify or destroy critical habitat, and that impacts to listed species from their actions be eliminated or minimized.



The Service's role is typically to identify impacts to fish, wildlife, and plants and their habitats by projects that are funded or authorized by the federal government and to work to minimize or eliminate those impacts. The Service reviews projects under the authority of several laws, depending on the project, including, but not limited to:

Under Section 7 of the Endangered Species Act, when federal agencies fund or authorize a project, they must evaluate the project for its impacts to listed species. If there are impacts, that federal agency then begins a project review process with the Service, called a "consultation," to eliminate or minimize those impacts.

Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661-667e; the Act of March 10, 1934; Ch. 55; 48 Stat. 401)- First passed in 1934, the Fish and Wildlife Coordination Act recognizes the importance of aquatic habitat, and the fish and wildlife found there, by requiring that whenever a body of water is proposed or authorized to be controlled or modified under a federal permit or license, consultation must be initiated with the Service and the appropriate state fish and wildlife agencies.



Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544, 87 Stat. 884) - The Endangered Species Act provides a means for the protection and conservation of endangered and threatened species and the habitats on which they depend. It also requires the Service to list species as endangered or threatened and to designate habitat, called "critical habitat," that is critical to the recovery of a listed species. The Service also has the authority to support and carry out recovery projects and to eventually delist a species, provided the recovery criteria are met.

Similar to the Endangered Species Act, the purpose of this project review process is to identify and minimize or eliminate impacts to fish and wildlife resources. While the Endangered Species Act specifically instructs federal agencies not to jeopardize the existence of a species, the Fish and Wildlife Coordination Act provides no such directive to the agency involved. However, the agency responsible for issuing the authorization must give consideration to the comments of the wildlife agencies involved.

Photos, top to bottom:

USFWS biologist with an endangered Appalachian elktoe mussel. USFWS photo.

USFWS biologist with stakeholders during a field trip explaining concerns over a proposed highway project. USFWS photo

Streambank erosion resulting from uncontrolled stormwater runoff. USFWS photo.

Listed species receive protection from further imperilment under the Endangered Species Act largely through two avenues—Sections 9 and 7. Section 9 forbids the take of a listed animal without a proper permit and restricts the take of listed plants (take is defined as to harass, harm, pursue, shoot, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in those activities). Section 7 mandates that federal agencies shall not jeopardize the existence of a listed

Clean Water Act (Federal Water Pollution Control Act), as amended (33 U.S.C. 1251-1387, October 18, 1972) - The Federal Water Pollution Control Act, popularly known as the Clean Water Act, is aimed at restoring and maintaining the chemical, physical, and biological integrity of the nation's waters. Originally enacted in 1948, the Clean Water Act was amended numerous times until it was reorganized and expanded in 1972, and it continues to be amended frequently.

The Clean Water Act requires a permit for the disposal of most dredge or fill material into waters of the United States. These permits are issued by the U.S. Army Corps of Engineers (Corps). Depending on the scale of the project, an activity may be permitted under a general or nationwide permit. If an individual permit is required, typically because of the size of a project or possible effects on a listed species, the Corps notifies the Service, and the Service is allowed to review the project and comment, providing recommendations to help minimize or eliminate negative impacts from the project in question. The Corps must evaluate any impacts of the project to federally listed species and notify the Service if the project may affect listed species or their critical habitat.

Federal Power Act, as amended, (16 U.S.C. 791a-797, 798-824a, and 824b-825r; June 10, 1920) - Among other things, the Federal Power Act authorizes the Federal Energy Regulatory Commission (FERC) to issue licenses for hydroelectric projects on streams or other bodies of water. In deciding whether to issue a license, the FERC is required to give “equal consideration” to power and development; energy conservation; the protection, mitigation of damage to, and enhancement of fish and wildlife; the protection of recreational opportunities; and the preservation of other aspects of environmental quality.

The 1986 amendments to the Federal Power Act, titled the Electric Consumers Protection Act, mandated several fish and wildlife provisions. Each license is to include conditions to protect, mitigate, and enhance fish and wildlife affected by the project. These conditions are to be based on recommendations received from the Service, the National Marine Fisheries Service, and state fish and wildlife agencies. The FERC is also required to mandate the construction, maintenance, and operation of fish passage facilities as prescribed by the Secretary of Commerce or the Secretary of the Interior.

During the relicensing process, the Service reviews hydropower projects for their impacts to fish and wildlife resources and recommends alterations to hydropower structures, adjustments to the timing and size of water releases, and other actions that mitigate for impacts to fish and wildlife.

Migratory Bird Treaty Act, as amended (16 U.S.C. 703-712; Ch. 128; July 13, 1918; 40 Stat. 755), and **Bald Eagle Protection Act**, as amended (16 U.S.C. 668-668d, 54 Stat. 250) - Under the authority of the **Migratory Bird Treaty Act** (MBTA) of 1918 and the **Bald Eagle Protection Act** (BEPA) of 1940, the Service reviews federal projects for their potential impacts to migratory birds.

The MBTA says that, unless permitted, it is against the law to take, capture, or kill; attempt to take, capture, or kill; or possess any migratory bird, bird part, nest or egg of a migratory bird.

The BEPA prohibits knowingly taking, or taking with wanton disregard for the consequences of an activity, any bald or golden eagles or their body parts, nests, or eggs, which includes collection, molestation, disturbance, or killing activities.

In reviewing federally funded or authorized projects, the Service provides recommendations as to how to minimize the potential for killing or harming migratory birds. Of special concern are projects such as telecommunications towers, overhead power lines, and other projects that may result in the direct mortality of migratory birds, as well as projects that indirectly effect migratory birds by removing nesting, roosting, or foraging habitat.

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