

The USFWS is here to help you!

An overview of the ESA process and T&E species



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U.S. Fish and Wildlife Service
New York Field Office
July 2016



Goals of Today's Session

- Provide an introduction to the U.S. Fish and Wildlife Service (USFWS) and NYFO staff
- Provide an overview of the Endangered Species Act (ESA) with focus on project reviews
- Answer your questions

Overview

- Introduction to USFWS and ESA
- Project screening/website
- NYSDEC project screening
- Lunch
- Consultation, conferencing, HCPs
- Indiana bat and northern long-eared bat

Module 1

We are a Federal Agency



USFWS Mission

Our mission is to work with others to conserve, protect and enhance fish and wildlife and their habitats for the continuing benefit of the American people.

What do we do?

- Fisheries
- National Wildlife Refuges
- Migratory Birds
- Environmental Contaminants
- Partners for Fish and Wildlife
- Endangered Species and Conservation Planning



What is the purpose of the ESA?

to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered and threatened species...

Basically – ensure there are sufficient viable populations of species in their natural habitats to get them to the point where they are no longer considered endangered or threatened



What is an endangered or threatened species?

- *Endangered Species*

... in danger of extinction throughout all or a significant portion of its range

- *Threatened Species*

... likely to become endangered in the foreseeable future in all or a significant portion of its range

What is a proposed species?

- A species that
 - we have initially determined warrants protection as either an endangered or a threatened species
 - and we have published a formal proposed rule in the Federal Register

What is a candidate species?

- A species that
 - USFWS has sufficient information on their biological status and threats to propose them as an endangered or threatened species under the ESA
 - but for which development of a proposed listing regulation is precluded by other higher priority listing activities

New York Species

(as of 07.05.16)

- 34 listed species
 - 2 are considered historic (swamp pink, eastern prairie fringed orchid)
 - 13 are considered the primary jurisdiction of NOAA (sea turtles, whales, sturgeon)
- 1 proposed species
 - Eastern massasauga
- 1 area of designated critical habitat
 - Great Lakes piping plover



New York Species



So, what does the ESA provide?

- Take prohibition
- Federal agency requirements
- Conservation planning
- Additional grant opportunities (no additional funding comes with a listing)

Most Frequently Encountered Sections of the ESA at a Field Office

- Section 2
purpose
- Section 3
definitions
- Section 4
listing
recovery planning
recovery implementation
- Section 6
cooperative agreements
w/States
- Section 7
interagency cooperation
- Section 9
prohibited acts
- Section 10
recovery permits
enhancement of survival permits
incidental take permits
- Section 11
penalties & enforcement
citizen suits

Remember: all sections of ESA have the same overall goal

to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered and threatened species...

Who needs to comply with the ESA?



What is prohibited?

Section 9

With respect to federally listed species, it is unlawful for any person subject to the jurisdiction of the U.S. to:

- import into or export from U.S.
- possess, sell, deliver, carry
- transport, or ship in interstate or foreign commerce
- take (fish and wildlife only)

Section 9 - Prohibitions

Take - ESA Section 3

- defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in such conduct”
- can include impacts to their habitat

More info on “take”

Harm - 50 CFR 17.3

. . . significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering

Harass - 50 CFR 17.3

. . . an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly impair normal behavioral patterns including breeding, feeding, or sheltering

Incidental take

Take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity

Module 2



Project Screening

- Goal- avoid and/or minimize adverse impacts and include beneficial measures
- Federal agency action – Section 7
 - Agencies have some specific obligations
- No federal agency action (involvement) – Section 10
- Initial steps are the same



Why should applicants/agencies (YOU) coordinate with us?

1. To conserve endangered species, and
2. To help project sponsors comply with the ESA

When should the applicant/agency (YOU) coordinate with the USFWS?

- Early and often:
 - Ideally well before final site plan development and throughout project planning
 - Any time they have a question about listed species biology, habitat, etc.
- Options:
 - Site visits
 - Conference calls/office meeting
 - E-mails

Project Screening

What is the process?

Where can I get more information?

www.fws.gov/northeast/nyfo/es/section7.htm



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Project Reviews in New York State

Are you looking for a species list?

Seeking Service environmental review of your project?

Conducting scoping for a project?

Then you've come to the right place!.....

WELCOME!

The U.S. Fish and Wildlife Service's (Service) New York and Long Island Field Offices are happy to provide technical assistance to private individuals and organizations, as well as federal, state, and local agencies pursuant to the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*).

What is this site for? To help you determine whether a federally-listed, proposed, or candidate species, and/or designated "critical habitat" may occur within a proposed project area.

Is this site different than the NYSDEC mapper? Yes. You should use both sites. The NYSDEC mapper only provides KNOWN locations of certain species. Consider the potential for species at your site based on location and habitat.

Who should use this site? Landowners, applicants, consultants, agency personnel, and any other individual or entity requesting Service review of their project within the State of New York.

When should you use it? Ideally, before contacting our office. Because the information is frequently updated to provide new trust resource information and methods to review projects, use these steps for each project review to ensure that you have current information.

How should I coordinate with the Service during an emergency? Please see the following [emergency consultation procedures handout](#) (pdf) for guidance.

What if you have questions while using this site? Contact our offices for assistance. For projects in the New York City area and Long Island, contact our Long Island Field Office at 631-286-0485. For projects throughout the rest of New York State, contact our New York Field Office at 607-753-9334.

We welcome any suggestions you may have to make this website more useful. Please send these comments via email to FWSES_NYFO@fws.gov

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Species in New York State

Federally Listed, Proposed, and Candidate Species in New York State (see pdf file [here](#))

Plants

[Plant Survey Windows \(pdf\)](#)



American hart's-tongue fern (*Asplenium scolopendrium var. americanum*) - Threatened:
[Species Profile](#)



Houghton's goldenrod (*Solidago houghtonii*) - Threatened:
[Species Profile](#)
[FWS Fact Sheet](#)



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Project Review Step 1 - Action Area

Determine the [action area](#) of the proposed project. Continue to [Step 2](#).

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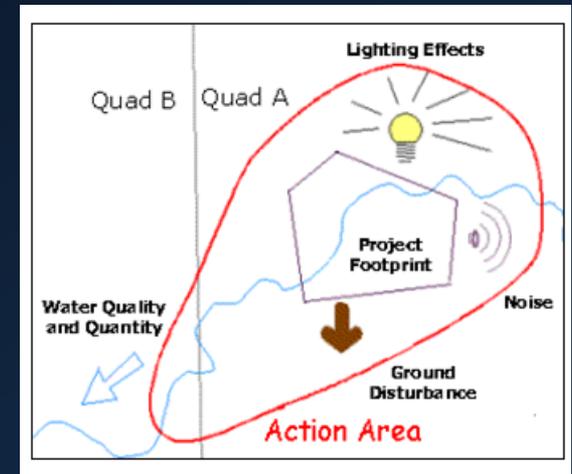
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Action Area

. . . all areas to be affected directly or indirectly by the federal action, and not merely the immediate area involved in the action.

50 CFR 402.02

This area may be larger than the project footprint (e.g., noise, downstream sedimentation)



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Project Review Step 2 - Official Species List

Use the Service's Information for Planning and Conservation (IPaC) system (<http://ecos.fws.gov/ipac>) to determine if any federally-listed, proposed, or candidate species may be present in the action area.

Click "Get Started" then "Enter Project Location."

Please don't use the "county" option, but instead [draw or upload your project location](#). This will allow you to get more accurate information related to potential presence of species in your action area.

After entering your project location, make sure to select "Request an official species list" under "Tasks."

Please enter the requested information (e.g., project name, project description, lead agency (permits/funding/approval), requesting organization, and contact information). Click "Submit official species list request."

After completing the steps to receive the official species list in IPaC, exit that website and continue below.

What if no species are listed under the "Endangered Species Act Species List" part of the Official Species List?

No further coordination under the ESA is required; you do not need to submit this project to the New York Field Office for review, and instead you can print this for your files.

Until the proposed project is implemented, check IPaC every 90 days to ensure that species information is current (by selecting "Need an updated species list"). If any changes to the Official Species List occur, you must complete this process again for any newly identified species.

Continue to [Step 5](#).

What if species are identified under the "Endangered Species Act Species List"?

Add all of the identified species to the [species conclusions table \(MS Word Format\)](#). Continue to [Step 3](#).

Note: there are other resources, including migratory birds, available through the IPaC Resources Tab and Trust Resource Report. This information can be helpful to consider during project planning, but is not required to be submitted for Endangered Species Act review in the species conclusion table. One exception is the bald eagle as we encourage including that species in the table if any roosts or nests are near the project.

Proposed species are any species of fish, wildlife, or plants that is proposed in the Federal Register to be listed under section 4 of the ESA.

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U.S. Fish & Wildlife Service

IPaC Information for Planning and Conservation

Powered by ECOS - the Environmental Conservation Online System

IPaC is a project planning tool which streamlines the USFWS environmental review process

[GET STARTED](#)

[Need an updated species list?](#)



Integrate the environmental review process into your project design

Quickly and easily identify USFWS trust resources and suggested conservation measures for your project.

How IPaC works:



Enter project location

Provide the geographic location for the project

Entering the project location is the first step in defining your project in IPaC. Draw the location on a map, or upload a shapefile if you have one.

While doing so, you can interact with map layers that show the distribution of important biological resources, such as critical habitat, wetlands, GAP land cover, and so forth.

ENTER PROJECT LOCATION



Get a resource list

See listed species and other FWS trust resources in this location and get an official species list



Analyze impacts

Provide project details to get recommended conservation measures



Begin consultation

Federal agencies can submit project data to the U.S. Fish &

1 Find location

Search or zoom to find the project location

Or skip this step and:

UPLOAD SHAPE FILE

SELECT BY STATE OR COUNTY

2 Define area



1 Find location

2 Define area

Draw the area where activities will occur

Select a drawing tool

 SKETCH

 POLYGON

 LINE

Other options:

UPLOAD SHAPE FILE

SELECT BY STATE OR COUNTY



My project Albany County, New York

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This project potentially impacts **17 resources** managed or regulated by the U.S. Fish & Wildlife Service.

[REVIEW SPECIES AND RESOURCES](#)

Tasks



Review potentially impacted resources

To see endangered species, migratory birds, wetlands, or refuges which may be impacted by this project



Request an official species list

To receive an official letter and species list from the New York Ecological Services Field Office

Local office

New York Ecological Services Field Office

(607) 753-9334

3817 Luker Road
Cortland, NY 13045-9349

(607) 753-9699

<http://www.fws.gov/northeast/nyfo/es/sect>

My project

 Albany County, New York

OVERVIEW

RESOURCES

DESIGN

IMPACT ANALYSIS

REGULATORY DOCUMENTS

SAVE SHARE

This project potentially impacts **17 resources** managed or regulated by the U.S. Fish & Wildlife Service.

[EXPORT TRUST RESOURCE REPORT](#)

Endangered species



Migratory birds



Refuges & Hatcheries



Wetlands

Endangered species

Proposed, candidate, threatened, and endangered species are managed by the [Endangered Species Program](#) of the U.S. Fish & Wildlife Service.

The list of species below are those that may occur or could potentially be affected by activities in this location:

Insects

AVAILABLE DOCUMENTS

[Species survey guidelines](#) (2 species)**Karner Blue Butterfly** *Lycaeides melissa samuelis*

My project

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Regulatory Documents

Official Species List

DESCRIPTION

An official species list is a letter from the local U.S. Fish & Wildlife Service office with information that assists in the evaluation of potential impacts of this project. It includes a list of species that should be considered under [Section 7](#) of the Endangered Species Act, a project tracking number, and other pertinent information from the local office.

[REQUEST OFFICIAL SPECIES LIST](#)

🕒 **Demo:** [Requesting a species list for an IPaC project](#) 3m

NO OTHER REGULATORY DOCUMENTS ARE AVAILABLE AT THIS TIME

My project Albany County, New York

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Official Species List Request

Federal agencies are required to "request of the Secretary of Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action" ([Section 7](#) of the Endangered Species Act). This requirement applies to projects that are conducted, permitted, or licensed by any Federal agency.

Upon submitting this form, IPaC will email a letter from the local U.S. Fish & Wildlife Office containing a species list that fulfills the requirement listed above, a project tracking number, as well as other pertinent information from the local office.

The following information will be submitted to the U.S. Fish & Wildlife Service and will be part of the public record. All fields are required unless otherwise noted.

Project information

Project name

Project description

Describe the location, size, scope, and timing of this project.

Within IPaC we recommend drawing project location

- We have uploaded species range maps based on predictive models for several species



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Project Review Step 3 - State Coordination

Check for any **known** locations of federal trust species by contacting the [New York Natural Heritage Program \(NYNHP\)](#) or using the [NYSDEC mapper](#). If a federally-listed, proposed, or candidate species is present within the action area, you will get a report from NYNHP directing you to contact the appropriate [New York State Department of Environmental Conservation \(NYSDEC\) Regional Office](#). Add any NYNHP and NYSDEC correspondence that you receive to the project review package.

What if NYNHP or NYSDEC mapper identifies species at the site or nearby?

Write "yes" for the *species present column* for the appropriate species on the species conclusions table and include notes about NYNHP/NYSDEC response in the notes column. If the conclusion for **all** species on your list is "yes" for "species present," go to [Step 5](#). Otherwise, continue to [Step 4](#).

What if no species are identified by the NYNHP or NYSDEC mapper?

There are no **known** occurrences but there may still be listed species present (surveys not yet conducted). Leave the *species present column* blank and continue to [Step 4](#).

*Please note that the NYNHP/NYSDEC provides information on **known** occurrences; this information does not replace field surveys as most project sites have not been previously surveyed specifically for listed species.*

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Relationships with NYSDEC and NYNHP

- **NYNHP**- non-regulatory but can provide **known** occurrence information. They do not provide recommendations for surveys.
- **NYSDEC**- all federally listed species are also listed by the State of NY. Separate laws/regs to comply with. Mapper provides buffered **known** occurrences. We encourage coordination **AT THE SAME TIME!!!**

Reminder

- Surveys for listed, proposed, candidate species have not occurred on every parcel across the State of New York
- Potential for additional occurrences for many of our species

SEQRA Recommendation

- Project sponsors should not just use NYSDEC mapper or NYNHP letters
- Make sure USFWS website process is also followed



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Project Review Step 4 - Suitable Habitat

For all species identified in "Endangered Species" section of IPaC Trust Resource Report, consider whether species may occur based on the habitat present within the action area for each species on the ESA species list.

Review the information on our [species page](#) and provided in IPaC, any information provided by NYNHP and NYSDEC, and any other sources of available information (e.g., habitat assessments) to determine whether the action area contains potential habitat for each species.

Is there guidance available for assessing suitable habitat?

Species	Habitat	Individuals
Bog turtle	Guidelines for Bog Turtle Surveys (pdf) Phase One Habitat Survey Report (pdf)	Guidelines for Bog Turtle Surveys (pdf)
Clubshell		Mussel Survey Guidance (pdf)
Dwarf wedgemussel		Mussel Survey Guidance (pdf)
Indiana bat	Summer Survey Guidance	Summer Survey Guidance
Karner blue butterfly	2008 Protocols (pdf)	2008 Protocols (pdf)
Northern long-eared bat	Summer Survey Guidance	Summer Survey Guidance
Rayed bean mussel		Mussel Survey Guidance (pdf)
Upstate NY listed plants		Plant Survey Windows (pdf)

What if there is no potential/suitable habitat?

If you conclude that potential habitat is absent within the action area, write "no" in the *habitat present column* for the appropriate species, and document what source(s) of information you consulted and the basis for your conclusion in the *Notes / Documentation column* of the species conclusions table. Add this documentation to your project review package.

If this is the answer for ALL species from IPaC, no further coordination under the ESA is required. You can print the Resource Report for your files.

Until the proposed project is implemented, check IPaC [every 90 days](#) to ensure that species information is current. If any changes to the Official Species List occur, you must complete this process for any newly identified species.

What if there is potential/suitable habitat?

Write "yes" in the *habitat present column*. Assess potential for impacts and coordinate with our office for the potential need for

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Suitable bog turtle habitat



Unsuitable bog turtle habitat





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Project Review Step 5 - Critical Habitat

Currently the only designated critical habitat in New York State is for the Great Lakes breeding population of the piping plover and occurs along 17 miles of Lake Ontario shoreline in Oswego County and Jefferson County. More information on designated critical habitat for the Great Lakes breeding population of the piping plover can be found [here](#). If the proposed project occurs within this area, add "piping plover critical habitat" to the species conclusion table. If the action area does not occur in this area, continue to [Step 6](#). NOTE: Designated critical habitat is only applicable for projects with Federal agency involvement. No comments/analyses on critical habitat are needed for projects without Federal agency involvement.

(A). If the action area does not intersect with the critical habitat, write "no" in the *critical habitat present column* in the species conclusions table, and continue to [Step 6](#).

(B). If the action area intersects with the critical habitat, write "yes" in the *critical habitat present column* in the species conclusion table and continue to [Step 6](#).

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Critical Habitat in New York



- Great Lakes breeding population of piping plover
- 1 Unit
- 2 Counties (Jefferson and Oswego)
- 27.4 Km (17 mi) of Shoreline
- 53.5% Private, 45.3% State, 1.2% TNC
- All units extend 500m inland from NHWL

Critical Habitat in New York

- Critical habitat is a designated area (through federal register rulemaking process) in which additional requirements apply for federal agencies
- In your letters, please do not use the term “critical habitat” in place of suitable habitat – only use it for the piping plover critical habitat at this time



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Project Review Step 6 - Bald Eagle

The bald eagle (*Haliaeetus leucocephalus*) is protected by the [Bald and Golden Eagle Protection Act](#) (BGEPA). Follow the steps below to determine if a BGEPA permit may be necessary. Your consultation with the [New York Natural Heritage Program](#) (NYNHP) or the [New York State Department of Environmental Conservation](#) (NYSDEC) (see [Step 3](#)) will have informed you of the presence of any bald eagles in the vicinity of your action area, since the bald eagle is a state-listed species and New York has regulations and / or guidelines for bald eagle management. The bald eagle breeding season in New York is from January through August.

(A). Determine if the action area intersects with a bald eagle nest buffer. The NYNHP and the NYSDEC will have informed you of any bald eagle nests¹ occurring in the action area in the course of your contact with them under [Step 3](#).

1. If the action area is not within 660 feet of a bald eagle nest, add "bald eagle" to the *species name column* and write "unlikely to disturb nesting bald eagles" to the *determination column* in the *species conclusions table*. Please provide a map of your project area, if in close proximity to a nest site and add it to the project review package. Continue to [Step 7](#).
2. If the action area is within 660 feet of a bald eagle nest, determine whether the proposed action may disturb the nesting eagle by following the steps in the [Service's Region 5 bald eagle management guidelines and conservation measures](#) web review process.

(a). If you are able to implement the recommendations in the guidelines, write "unlikely to disturb nesting bald eagles" in the *determination column*. Document recommendations you plan to implement to avoid disturbance in the *Notes / Documentation column* of the species conclusions table, and add any additional documents / documentation to the project review package. Continue to [Step 7](#).

(b). If you are unable to implement the recommendations in the guidelines, write "may disturb nesting bald eagles" in the *species determination column*. Provide an explanation of why the recommendations cannot be implemented in the *Notes / Documentation column* of the species conclusions table, and add this to the project review package. Continue to [Step 7](#).

¹Bald eagle roosting concentrations should also be considered. If the proposed project is near a concentration area, please contact the Service to assist with an evaluation of the proposed project.

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Project Review Step 7 - Determinations and Package Submittal

The *habitat present*, *species present*, and *critical habitat present* columns should be filled in for all species / critical habitat by this point.

(A). **For projects with Federal agency involvement:** The ESA directs all Federal agencies to work to conserve endangered and threatened species and to use their authorities to further the purposes of the ESA. Section 7 of the ESA, called "Interagency Cooperation," is the mechanism by which Federal agencies ensure the actions they take, including those they fund or authorize, do not jeopardize the existence of any listed species. Here is a direct link to the [Section 7 Consultation Handbook](#).

TIP: Here is a link to guidance on [how to write a biological assessment](#).

NOTE: Only Federal agencies or their designated non-Federal representatives can complete informal Section 7 consultation with the Service. If interested, Federal agencies would need to designate a non-Federal representative, in writing, and can do this via email or letter to the Service. If you are not a Federal agency or their designated non-Federal representative, the Service can provide technical assistance to you, but cannot complete consultation with you directly.

1. If suitable habitat is absent for listed / proposed / or candidate species, or surveys for the species were negative, an appropriate determination for those species is that the project will result in "no effect" to those species. If there is no designated critical habitat within the action area, an appropriate determination is that the project will result in "no effect" to the critical habitat. If the determination for each species **and** critical habitat is "no effect" **and** the BGEPA determination is "no BGEPA permit required," Federal agencies can document this information for your files. If you choose to submit the project review package that supports your conclusions, this office will review the information.

2. If any listed / proposed / candidate species / or designated critical habitat occurs in or is likely to occur in the project action area, the proposed action must be evaluated to determine whether it may affect¹ the species or critical habitat. If any species or critical habitat "may be affected by the proposed project" or the BGEPA determination is "BGEPA permit may be required," submit the project review package to this office for review. Attach the [online project review request letter \(MS Word format\)](#) and ensure you provide all requested information. We will not respond until we receive a complete project review package.

(B). **For projects without Federal agency involvement:** For projects not authorized, funded, or carried out by a Federal agency, consultation with the Service pursuant to Section 7 of the ESA is not required, but the prohibitions provided under the ESA still apply. For instance, **no person is authorized to "take" ² any listed wildlife species without appropriate authorizations from the Service.** Therefore, we provide technical assistance to individuals and agencies to assist with project planning to avoid the potential for "take," or if take cannot be avoided, to provide assistance with their application for an incidental take permit

[Endangered Species](#)[Overview](#)[Listing & Classification](#)[Recovery](#)[Long Island Recovery Efforts](#)[Project Reviews](#)

- [Step 1](#)
- [Step 2](#)
- [Step 3](#)
- [Step 4](#)
- [Step 5](#)
- [Step 6](#)
- [Step 7](#)

[Species in New York State](#)

Connect the dots!

- Not helpful to just summarize project, summarize species biology and then have a one sentence determination
- Final determination should connect the species biology and the project
- What parts of the project may impact the species, how, what conservation measures will avoid or minimize that impact?
- Someone unfamiliar with the species should be able to understand the conclusion

Project info to submit to NYFO

- New checklist coming!
- Detailed project description
 - Project location
 - Topographic map with the project area identified
 - List of proposed actions
 - Timing of proposed actions
 - Federal agency involvement?
 - Summary of proposed conservation measures
- Map (*e.g.*, aerial photo) of the proposed project area with coarse vegetative cover types in acres
- Summary table of current vs. proposed future acreage of each vegetative cover type

Project info to submit to NYFO

- Wetland delineations and proposed wetland/stream mitigation (if applicable/available)
- Proposal for handling any contiguous, suitable habitat that extends off the project site
- Species assessment reports (including data sheets)
- Information on tree removal (amount, condition of trees)
- Any other pertinent information

Some things for project sponsors to think about when evaluating projects

- Species present or could be present?
- What does the species need?
 - Food
 - Clean water
 - Shelter – how large of an area? Key components?
 - Security – are the animals safe? Introduction of predators? Introduction of invasive species?
- Is the project affecting those in any way?
 - Timing, duration, scope

Some things the USFWS thinks about when evaluating projects

- Were protocols followed?
- Were surveyors qualified to do the survey?
- Good rationale provided for determinations?
- Was species biology considered?
 - For feeding, breeding, sheltering
- Were conservation measures included?

LIVE DEMO