Guidance on Determining Need for ITP under ESA Section 10(a)(1)(B)

Q1. Keeping in mind that ESA does **not** apply to take of plants incidental to otherwise lawful activities – Are there ESA listed species present in the area where your activity will occur or is it likely they will be present at some point in the duration of your activity?

Yes ➔ No permit needed.

No ➔ Yes

Q2. Is it likely that any of these listed species will be exposed to your activities (or the results of your activity) during any of the various phases of your activity?

Yes ➔ No permit needed.

No ➔ Yes

Q3. Will exposure of listed species to your activities **likely** result in any of the following actions to the species: pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting to engage in any of these activities?

Yes, to incidental take ➔ A permit is likely needed.

Yes, to purposeful take ➔ A permit under Section 10(a)(1)(B) of the ESA does **not** cover purposeful take.

No ➔ No permit needed.

Q4 (Harass). Will your activity, through an intentional or negligent act or omission, likely annoy a listed species to such an extent as to cause an injury to the listed species by significantly disrupting normal behavior patterns?

Yes ➔ This take is not permitted as it is not incidental.

No ➔ No permit needed.

Q5. (Harm). Is your activity likely to result in an act that actually injures or kills a listed species?

Yes ➔ A permit is likely needed.

No ➔ No permit needed.

Q6 (Harm through habitat modification). Will your activity:
   a) Likely result in significant habitat modification or degradation?
   b) Significantly impair essential behavior patterns due to habitat modification or degradation?
   c) Cause an actual injury or death to a listed species due to a) and b)?

Yes, to all three questions ➔ A permit is likely needed.

No ➔ Definition of “harm” not satisfied through habitat modification alone. No permit needed.

These four questions determine whether the exposure from your activity to the listed species constitutes “take” under ESA.

Ultimately you, the potential applicant, must decide whether it is reasonable to conclude that the proposed action is likely to result in the take of a listed species. If such an outcome is unlikely, you do not need to seek a Section 10 permit.