

Guidance for Completing Project Reviews Under the Endangered Species Act in Pennsylvania

U.S. Fish and Wildlife Service
Pennsylvania Ecological Services Field Office

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Under section 7 of the Endangered Species Act of 1973 (ESA), a Federal agency or its designated representative needs to determine whether their proposed projects may affect threatened and endangered species or designated critical habitat. The following step-by-step instructions outline the process for how to make this determination, and if necessary, how to initiate consultation with the Pennsylvania Ecological Services Field Office (PAFO) when a Federal agency authorizes, funds, or carries out an action.

This guide is intended to help Federal action agencies or their designated representatives, project proponents, and consultants complete project reviews under the ESA and obtain official documentation to ensure that their proposed projects will be in compliance with the ESA.

Projects that do not have a federal nexus may also follow these steps to obtain an official species list and to determine if their project may cause take¹ to federally listed species.

Note: If additional information is needed or you want personal assistance, please contact our main office number at (814) 234-4090.

Step 1. Obtain an Official Species List

For steps outlined in this section, a demonstration using the Information for Planning and Consultation (IPaC) project planning tool can be found [here](#).

- Go to the Information for Planning and Consultation ([IPaC](#)) website (<https://ipac.ecosphere.fws.gov/>). Select **GET STARTED**.
- You will be asked to define your project location. You can do this using a few methods.
 - Method 1: Use the **Find Location** box by entering an address or latitude and longitude (in decimal degrees). Then use the **Define Area** box by using the drawing tools to draw the boundary of your project area.
 - Method 2: You may use the **Upload Shapefile** button if you have a GIS shape file of your project area.
 - Method 3: You may use the **Select by County** button if you are uncertain of your specific project location.
- Confirm your project location by selecting **Continue**. You may also select **Start Over** if you need to redefine your project location.

¹ **take** – “...to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct” (ESA Section 3).

Once you have defined your project location, you will be taken to a page which provides information regarding the resources in the area. You can use the navigation on the left-hand side of the page to explore the resources present within your defined project area. *You may use the **Print Resource List** button on the left-hand side of the page to obtain an unofficial resources list for planning purposes.*

However, in order to obtain an **Official Species List** to be used for official ESA review, follow the instructions below:

- Click **Define Project** on the left-hand side of the page.
- Log-in with your existing IPaC account or create an account in order to proceed.
- Create a **Project Name** and provide a **Project Description**.
 - For the **Project Name**², use the following Naming Convention: Project Name_PNDI Number (if available)_Action Agency or company
 - Example 1: State Route 88 Culvert Replacement_PNDI #799255_Federal Highway Administration
 - Example 2: Flowing Water Dam Removal Project_PNDI #799255_US Army Corps of Engineers
 - Example 3: Cover Crop_Monroe T544_PNDI #799255_NRCS
 - For the **Project Description**, be sure to include details on the various components of your project including timing and duration.
 - The project description should address the full “Effects of the Action” and include any applicable secondary actions (such as access roads, transmission lines, staging areas, ingress and egress, etc.).
 - The project description should also include details on tree clearing, if applicable (e.g., how many trees or acres will be cut and during what date range), whether any wetlands or streams are present and if they will be impacted, distance to resources, and if bat winter habitat is present (caves, mines, rocky outcrops).
- Click **Save**. You will now see your project name, project description, and project location.

Next, you will be able to complete the **initial step** of the official ESA review, which is obtaining an **Official Species List**.

- Click **Start Review** on the right-hand side of the page.
- Click **Continue** on the page which describes the steps of the ESA review process.
- You will be prompted to request a species list. Click **Yes, Request A Species List**.
- Fill in all relevant **Contact Information**. Verify your project name, description, and location. Provide your lead agency and a project classification.
- Click **Submit Official Species List Request**.

This request will automatically generate a project tracking number (i.e., consultation code) for your project and will automatically generate an official letter from the U.S. Fish and Wildlife Service (Service) which includes an official species list that is valid for 90 days. This letter will

² The Project Name should not include personally identifiable information such as the landowner’s name, address, etc.

be sent to you at the e-mail address you provided with your IPaC account. You can now exit the IPaC website.

To update an official species list obtained from IPaC, first log in to IPaC. From the [My Projects](#) page, find the project, expand the row, and click **Project Home**. In the **What's next** box on the project home page, there is **Request updated list** button to update your species list.

Step 2. Evaluate Project for Potential Effects to Listed Species and Designated Critical Habitat

You will have two general ways you can approach evaluating the proposed project for effects to the species and critical habitat on your **Official Species List**: (1) IPaC Determination Keys, or (2) Internal Evaluation Process. In some cases, you may choose to use both options. For example, you might use a Determination Key for some species and an Internal Evaluation Process for others.

Option 1: Use an IPaC Determination Key (if available and applicable) to make an assisted determination

For steps outlined in this section, a demonstration using IPaC can be found [here](#).

Determination Keys (Dkeys) are logically structured sets of questions designed to assist users in determining if a project qualifies for a pre-determined consultation outcome based on existing programmatic consultations³ or internal Service standing analyses⁴. Qualifying projects can generate Service concurrence letters instantly through IPaC. Dkeys provide consistent and transparent outcomes and significantly reduce the time to complete consultation for qualifying projects.

One Dkey is available for transportation specific projects with a Federal Highway Administration nexus⁵ and two Dkeys are available for other non-transportation projects in Pennsylvania (Table 1). Please note that only one assisted Dkey may be completed per species for each project, *so you should carefully review the descriptions of all available Dkeys to select the most appropriate key for your project*. For example, completing one Dkey for a species, such as Indiana bat, will disable other keys that cover Indiana bats.

³ A programmatic consultation is a consultation that addresses an agency's multiple actions on a program, regional, or other basis. For example, the FHWA/FRA/FTA Section 7 Range-wide Consultation for Indiana Bat and Northern Long-eared Bat (<https://www.fws.gov/program/endangered-species/bat-consultation-conservation-strategy>).

⁴ A standing analysis is based on best available scientific information and contains the analytical basis for a Dkey's predetermined consultation outcomes. An example is the Standing Analysis for the Northern Long-eared Bat and Tricolored Bat Assisted Determination Key (<https://www.fws.gov/media/final-consultation-guidance-development-projects>)

⁵ Transportation projects that are federally funded may use the "FHWA, FRA, FTA Programmatic Consultation for Transportation Projects" Dkey to assist in making a determination for listed bats, but additional consultation may be necessary for other species (see Table 1).

Table 1. Assisted Determination Keys available in Pennsylvania.

Name of key available in PA	Species covered	Eligible project types	Ineligible project types
Northeast Dkey	All federally listed species in PA except northern long-eared bat and tricolored bat	Routine, small-scale projects in some areas of PA may be able to get concurrence if applicants agree to certain conservation measures for some species.	Wind energy development; aerial or other broad application of chemicals; large groundwater withdrawals; long-term (i.e., greater than 10 years) permits (e.g., FERC hydropower licenses.)
Range-wide Northern Long-eared and Tricolored Bat Dkey	Northern long-eared bat and tricolored bat	Projects with potential effects (e.g., tree clearing) to northern long-eared bat and tricolored bat.	Intentional take of any species, wind energy development, programmatic consultations
FHWA, FRA, FTA Programmatic Consultation for Transportation Projects	Indiana bat, northern long-eared bat, and tricolored bat	Federal transportation projects with potential effects to listed bats. Note that this key does not cover other Federally listed species that may be affected by project activities. Therefore, additional consultation or coordination may be necessary for other species.	Projects other than federally funded or authorized transportation projects

Option 2. Apply Internal Evaluation Process (i.e., make a determination on your own)

Once you obtain your official species list, you are not required to continue in IPaC, although in most cases using a Dkey would expedite your review. If you choose to make an effects determination on your own, please review our step-by-step instructions below to assist in making your determinations.

Step 3. Make an Effects Determination

Once you have evaluated your project, you now need to make an effects determination. If you are a **Federal action agency**, your determination may be one of the following, and should be applied to each species identified on your official species list, as well as for each designated critical habitat area identified as overlapping with your project location:

- **“No effect”** means that there will be no impacts, positive or negative, to federally listed species or designated critical habitat from the proposed action. This determination is usually not appropriate if suitable habitat, designated critical habitat, or species are present in the action area.
- **“May affect, is not likely to adversely affect”** means that all effects to federally listed species or designated critical habitat from the proposed action would be insignificant, discountable, or wholly beneficial. Insignificant effects relate to the size of the impact and include those effects that are not measurable. Discountable effects are effects that are extremely unlikely to occur. Wholly beneficial effects include entirely positive effects without any adverse effects to the species.
- **“May affect, is likely to adversely affect”** means that adverse effects may occur to federally listed species or designated critical habitat from the proposed action and the effect is not insignificant, discountable, or wholly beneficial. Adverse effects can result from habitat loss, habitat alteration, or impacts to the species life history needs. Before making this determination, we highly recommend contacting PAFO to explore additional actions or modifications to the proposed project that could minimize or avoid adverse effects on federally listed species or designated critical habitat.

To aid in making a determination for each species identified on your official species list and any designated critical habitat areas, please include the below information for documentation submitted to the Service per 50 CFR 402.14(c)(1):

- (i) A description of the proposed action, **including any measures intended to avoid, minimize, or offset effects of the action.** Consistent with the nature and scope of the proposed action, the description shall provide sufficient detail to assess the effects of the action on listed species and critical habitat, including:
 - (A) The purpose of the action;
 - (B) The duration and timing of the action;
 - (C) The location of the action;
 - (D) The specific components of the action and how they will be carried out;
 - (E) Maps, drawings, blueprints, or similar schematics of the action; and
 - (F) Any other available information related to the nature and scope of the proposed action relevant to its effects on listed species or designated critical habitat.
- (ii) A map or description of all areas to be affected directly or indirectly by the Federal action, and not merely the immediate area involved in the action (i.e., the Action Area as defined at 50 CFR 402.02).
- (iii) Information obtained by or in the possession of the Federal agency and any applicant on the listed species and designated critical habitat in the Action Area (as required by paragraph (c)(1)(ii) of this section), including available information such as the presence, abundance, density, or periodic occurrence of listed species and the condition and location of the species’ habitat, including any critical habitat.
- (iv) A description of the effects of the action and an analysis of any cumulative effects.
- (v) A summary of any relevant information provided by the applicant, if available.
- (vi) Any other relevant available information on the effects of the proposed action on listed species or designated critical habitat, including any relevant reports such as environmental impact statements and environmental assessments.

To demonstrate your effects determination, we recommend you make a table with three columns: species/critical habitat, effect determination, and rationale for your determination for each species/critical habitat (Table 2).

Table 2. Examples of Species Effects Determinations and Rationale.

Species/Critical Habitat	Effect Determination	Rationale
Dwarf Wedgemussel	No Effect	The proposed project will not impact aquatic habitat.
Indiana Bat	May affect, is not likely to adversely affect	Suitable habitat is within the proposed action area, but the species is not likely to be adversely affected by the project because tree removal will not take place and winter bat habitat will not be altered.
Bog Turtle	May affect, is likely to adversely affect	The species is documented to occur within the action area and the proposed project will alter hydrology of the bog turtle wetland.
Rabbitsfoot Critical Habitat	May affect, is likely to adversely affect	The proposed project will alter physical and biological features of rabbitsfoot critical habitat.

Please note that when analyzing the potential impacts of your project, there are three types of effects that need to be considered: direct effects, indirect effects, and cumulative effects. The ESA defines these types of effects as:

- **Direct effects** – are those effects that are the direct or immediate effects of the proposed project on the species or its habitat.
- **Indirect effects** – are those effects that are caused by the proposed project and are later in time, but still are reasonably certain to occur (i.e., removing the nesting /roosting habitat of a migratory species during the time of the year the habitat is unoccupied would likely avoid direct effects; however, indirect effects to the species are reasonably certain to occur when the species returns later and its nesting/roosting habitat is gone).

- **Cumulative effects** – are those effects of future State, tribal, local, or private activities, not involving Federal activities, that are reasonably certain to occur within the action area.

Please note that each of these types of effects can result in either a “may affect, is likely to adversely affect” determination or a “may effect, is not likely to adversely affect” determination. Larger projects can become complex very quickly. For complex projects, we recommend a person knowledgeable in the ESA review the project and determination(s) prior to sending it to the PAFO for review.

If “**no effect**” determinations are made for each species and designated critical habitat on your list, the official species list letter and your determination table can be used to document completion of ESA review, and there is no need to continue to Step 4 since the ESA does not require Federal agencies to consult with the Service if the action agency determines their Federal action has "no effect" on federally listed species or designated critical habitat (50 CFR 402.12). Please note that as previously stated, “no effect” determinations are usually not appropriate if suitable habitat, designated critical habitat, or species are present in the action area.

Step 4. Submit your project to the PAFO

All project descriptions and effects determinations should be submitted electronically to IR1_ESPenn@fws.gov. After submitting your official IPaC species list letter and all associated project materials, your project will be assigned to a biologist and the review process will be initiated.

Please title your transmittal e-mail with the following naming convention: IPaC Number_Project Name_PNDI Number (if available)_Action Agency or company

Example: 2021-0000210_Centre County Stream Restoration (PNDI #789991)_US Army Corps of Engineers

For Federal action agencies that make a “**may affect, not likely to adversely affect**” determination through the use of an IPaC Dkey, the determination letter will be automatically sent to IR1_ESPenn@fws.gov and the project will be reviewed within 30 calendar days. If the Service concurs with the determination, no further correspondence will be sent from the PAFO. If the Service disagrees with the determination, or if there is insufficient supporting information to concur, we will contact you within the 30-day grace period.

For Federal action agencies that make a “**may affect, not likely to adversely affect**” determination through an internal review process (without the use of a Dkey) for any species or designated critical habitat on your species list, you should submit a copy of your official species list letter, your effects determination (including supporting information, such as a biological assessment), and a request for concurrence to IR1_ESPenn@fws.gov. The PAFO will review all information provided that supports the determination and either concur or not concur with the determination through official correspondence.

For Federal action agencies that make a **“may affect, likely to adversely affect”** determination for any species or designated critical habitat, you should submit your official species list letter, your effects determination (including supporting information, such as a biological assessment), and a request to enter into formal consultation to IR1_ESPenn@fws.gov. However, before submitting this request, we strongly recommend contacting us first to explore additional actions or modifications to the proposed project that could minimize or avoid adverse effects on federally listed species or designated critical habitat. If such project adjustments or measures are not practicable, formal consultation would be required. For more information regarding formal consultation, please see the Service's Consultation Handbook at <https://www.fws.gov/sites/default/files/documents/endangered-species-consultation-handbook.pdf>.

Please feel free to contact our main office number at 814-234-4090 if you have any questions regarding this information.

Approved by:

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