

Appendix F. Federal Action Agency Involvement

The Multi-Bat Species General Conservation Plan (GCP) for Routine Development Projects may streamline Endangered Species Act (ESA) implementation for proposed projects that also involve other Federal agency actions that may affect the Covered Species within the Plan Area of New York (NY), Pennsylvania (PA), and West Virginia (WV). The Covered Species include the federally listed Indiana bat (*Myotis sodalis*; Endangered; IBAT) and the northern long-eared bat (*Myotis septentrionalis*; Endangered; NLEB), as well as the tricolored bat (*Perimyotis subflavus*; Proposed Endangered; TCB).

In cases where Federal agencies authorize, fund, or carry out activities that may affect listed species, they must consult with the U.S. Fish and Wildlife (Service) under ESA section 7(a)(2) to ensure that their actions will not jeopardize the listed species' continued existence.³⁰⁵ In cases where a potential GCP project has such a federal nexus, the Federal agency can incorporate the relevant Project Proponent's³⁰⁶ commitments, including the GCP required mitigation, into their formal consultation initiation package (e.g., Biological Assessment). Once the Service determines that the Federal agency has properly incorporated all of the Project Proponent's commitments into the initiation package, the Service can then extend incidental take³⁰⁷ coverage³⁰⁸ from the GCP's intra-Service Biological Opinion³⁰⁹ to the consulting Federal agency through a streamlined consultation process. The expectation is that the Service would be able to provide this brief document in significantly less time than standard statutory section 7 timeframes. The "No Surprises Rule"³¹⁰ regulatory assurances provided to non-Federal Project Proponents through Permit³¹¹ issuance do not apply to participating Federal agencies and reinitiation³¹² requirements still apply to the Federal agency. The Service would expect there will be no additional reasonable and prudent measures or terms and conditions for the Federal agency

³⁰⁵ A Federal agency is required to consult with the Service if an action "may affect" listed species or designated critical habitat, even if the effects are expected to be beneficial. A "may affect" determination includes actions that are "not likely to adversely affect," as well as "likely to adversely affect" listed species. If the action is "not likely to adversely affect" listed species (i.e., the effects are beneficial, insignificant, or discountable), and the Service agrees with that determination, the Service provides concurrence in writing and no further consultation is required. If the action is "likely to adversely affect" listed species, then the Federal action agency must request initiation of formal consultation. This request is made in writing to the Service and must include a complete initiation package. Formal consultation concludes with the Service's issuance of a Biological Opinion and incidental take statement to the Federal action agency.

³⁰⁶ The GCP defines a Project Proponent as a potential Applicant. For the purposes of this plan, a Project Proponent is any person planning to engage in activities within the Plan Area that may result in take of a Covered Species. A Project Proponent is referred to as an Applicant at the time they submit a complete application. "Person" is further defined in ESA section 3(13).

³⁰⁷ Take is defined in ESA section 3 as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

³⁰⁸ Incidental take coverage provided to Federal action agencies through this GCP would be subtracted from the overall annual take estimated in GCP section 4.5.2, Table 2 for the state (NY, PA, or WV) where the take occurs.

³⁰⁹ April 22, 2020, memorandum from Assistant Director of the Service.

³¹⁰ The No Surprises Rule (63 FR 8859), provides regulatory assurances to the Permittee of a Permit issued under ESA Section 10(a)(1)(B) that no additional land use restrictions or financial compensation beyond that described in the Habitat Conservation Plan and under the Permit conditions will be required of the Permittee with respect to species covered by the Permit, even if unforeseen circumstances arise after the Permit is issued indicating that additional mitigation is needed for a given species covered by a Permit (50 CFR 17).

³¹¹ A Permit refers to an incidental take permit under ESA section 10(a)(1)(B).

³¹² See 50 CFR 402.16.

or Project Proponents with respect to ESA issues because these are already incorporated in the Project Proponent's project description and commitments, the Biological Assessment submitted by the Federal agency, and various GCP-related decision documents including its intra-Service Biological Opinion.

Additional information on implementation can be found in the Service's GCP intra-Service Biological Opinion. GCP eligibility should be discussed with the Service's local field office.³¹³ Local field offices may need to work with the Federal action agency requesting to use this GCP to develop additional streamlining approaches.

³¹³ Contact information for the Service's local field offices can be found in GCP appendix A.