

Guidance for Completing Project Reviews for Endangered Species Act Compliance in Pennsylvania

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

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Section 9 of the Endangered Species Act of 1973 (ESA) prohibits certain acts with respect to federally listed species, including taking¹, possessing, selling, delivering, or importing/exporting such species. Under section 7(a)(2) of the ESA, a Federal agency (or its designated non-Federal representative) that is authorizing, funding, or carrying out a project must determine whether their proposed project may affect threatened or endangered species or designated critical habitat prior to commencing the project. Under Section 10(a)(1)(b) of the ESA, non-Federal entities must determine whether their proposed project will result in take to federally listed species prior to commencing a project. The following step-by-step guidance outlines the process for how to make these determinations, request technical assistance if needed, and, if necessary, how to initiate consultation with, or request an incidental take permit from, the U.S. Fish and Wildlife Service's (Service) Pennsylvania Field Office (PAFO) for both Federal agencies and non-Federal entities, respectively.

This guidance is intended to help Federal action agencies (or their designated non-Federal representatives), as well as non-Federal entities (e.g., project proponents, consultants, state and county agencies, etc.), complete project reviews under the ESA and obtain official documentation to ensure that their proposed projects comply with ESA requirements.

If additional information is needed or you would like personal assistance, please contact our main email at IR1_ESPenn@fws.gov (preferred) or our general office number at (814) 298-4396.

Step 1. Screen Your Project through the Pennsylvania Conservation Explorer Tool

Although not specifically required for ESA compliance, we highly recommend project proponents in Pennsylvania start with the Pennsylvania Conservation Explorer Tool to ensure compliance and consistency with state policy guidelines (see [PNDI Policy](#)).

- Visit the Pennsylvania Conservation Explorer website to screen your project for impacts to state and federally listed species:
 - <https://conservationexplorer.dcnr.pa.gov/>
- Follow the instructions under the Search Results and U.S. Fish and Wildlife Service heading in the receipt.

¹ The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

- If your PNDI Receipt says “**no known impact**” to federally listed species, this is equivalent to a “**no effect**” determination for ESA compliance, and no further coordination is needed (do not proceed to the below steps).
- If your PNDI Receipt says “**potential impact**” to federally listed species, follow the instructions under the U.S. Fish and Wildlife Service Response portion of the receipt which will send you to the Information for Planning and Consultation (IPaC) website (continue to Step 2).

Step 2. Obtain an Official Species List from the U.S. Fish and Wildlife Service

For steps outlined in this section, a demonstration using the IPaC project planning tool can be found [here](#). For training specific to Pennsylvania, see the Pennsylvania Field Office’s IPaC training link on our [project review page](#).

- Go to the [IPaC](#) website at: <https://ipac.ecosphere.fws.gov/>. Select **GET STARTED**.
 - **DO NOT ENTER THE CONSULTATION PACKAGE BUILDER** – this tool is unnecessary at this stage.
- 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 shapefile of your project area. Note that shapefiles can be downloaded from PNDI and uploaded into IPaC.
 - 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.

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.*

To obtain an **Official Species List** to be used for official ESA review, follow these instructions:

- Click **Define Project** on the left-hand side of the page.
- Log-in with your existing IPaC account or create an account 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)_Federal Action Agency or company

² The Project Name should not include personally identifiable information such as the landowner’s name, address, etc. However, please ensure your title is specific enough to describe the project type. For instance, *College Township Sewer Line Replacement* or *Top of the Hill Housing Development*. Please avoid vague project titles such as *confidential development* or *improvement project*.

- 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: Rural Gathering Pipeline_PNDI #799255_Steel Pipe Co.
- 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 (e.g., 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 (if applicable) and a project classification.
- Click **Submit Official Species List Request**.

This request will automatically generate a project code and an official letter from the Service which includes an **Official Species List** that is valid for 90 days³. This letter will be sent to you at the e-mail address you provided with your IPaC account.

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, click the **Request updated list** button to update your species list.

Step 3. Use IPaC to Help Determine Effects to Federally Listed Species

To evaluate your proposed project for effects to the federally listed species and critical habitat on your **Official Species List**, select **NEXT STEP: DETERMINATION KEYS** from the IPaC website.

³ If the project is ongoing past the 90-day timeframe of your official species list, a new species list should be run to ensure ESA compliance. If the updated official species list contains new species, evaluate project effects for those species.

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 consultations or internal Service standing analyses. Dkeys provide consistent and transparent outcomes and significantly reduce the time to complete consultation for qualifying projects. A demonstration for using Dkeys can be found [here](#). There are currently three Dkeys available in Pennsylvania (Table 1), but please note that an *ALL SPECIES Pennsylvania Dkey* is currently being created which will further streamline the evaluation process.

Table 1. Assisted Determination Keys available in Pennsylvania.

Name of Dkey available in PA	Species covered	Eligible project types	Ineligible project types
Northeast Dkey	All federally listed and proposed species in PA except northern long-eared bat, tricolored bat, monarch butterfly, and regal fritillary	Projects with potential effects (e.g., tree clearing, wetland impacts, stream impacts, etc.) to all PA federally and proposed listed species except northern long-eared bat, tricolored bat, monarch butterfly, and regal fritillary.	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 only 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 Dkey	Indiana bat, northern long-eared bat, and tricolored bat	Transportation projects funded, authorized, or approved by the FHWA, FRA, or FTA with potential effects to listed bats. 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 (see the other available Dkeys).	Transportation projects that are not funded, authorized, or approved by the FHWA, FRA, or FTA transportation agencies.

Please note that you may need to run more than one Dkey to obtain effects determinations for the species on your **Official Species List**.

Potential Outcomes for Determination Keys

Determination keys result in determination letters, which include assisted determinations for each federally listed species and designated critical habitat on your **Official Species List**. The following assisted determinations may be provided on IPaC determination letters:

- **“No effect” (NE)** 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.
- **“Not likely to adversely affect” (NLAA)** 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” (MA)** 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.

Please note that PAFO staff vet a subset of the letters that reach a **NLAA** determination. You will be contacted should staff have any questions or notice inaccuracies during the vetting process. If you are not contacted by PAFO staff during the Dkey grace period for **NLAA** determinations, no further coordination is required. However, if you are contacted by PAFO staff during the Dkey grace period for **NLAA** determinations, further coordination may be needed. The grace period for each **NLAA** determination is stated in the Dkey determination letter.

Step 4. Finalize IPaC-Assisted Effect Determinations for Federally Listed Species

All proposed projects will either have a Federal nexus or a non-Federal nexus. A **Federal nexus** signifies a Federal agency is authorizing, funding, or carrying out the action. A **Non-Federal nexus** signifies a Federal agency is not authorizing, funding, or carrying out the action.

Table 2 below clarifies next steps to take based on your project’s Federal nexus status and the determination outcome listed in the IPaC Dkey letter. If you receive a **“May Affect”** determination for any of the species or critical habitat on your **Official Species List**, see **Appendix A** for assistance in finalizing your determinations.

For non-Federal applicants, should you discover a Federal nexus for your project after receiving your initial screening through IPaC, coordinate with the Federal action agency to determine next steps. This may include converting a **NLAA** technical assistance letter to a concurrence letter.

Table 2. Next Steps Per Associated Effects Determination and Jurisdiction Using IPaC Assisted Determination Keys.

IPaC-Assisted Effects Determination	Federal Nexus	Non-Federal Nexus
No effect (NE)	No further review is required by the Service (project complete) .	No further review is required by the Service (project complete) .
Not Likely to Adversely Affect (NLAA)	Letters are valid at the end of the appropriate grace period <u>or</u> after any questions are resolved through the vetting process; no further review is required by the Service (project complete) .	Letters are valid at the end of the appropriate grace period <u>or</u> after any questions are resolved through the vetting process; no further review is required by the Service (project complete) .
May Affect (MA)	Determine whether the project: 1) results in “ no effect ” to listed species or critical habitat; 2) is “ not likely to adversely affect ” listed species or critical habitat; or, 3) is “ likely to adversely affect ” listed species or critical habitat (see Appendix A).	Determine whether the project: 1) will result in take to listed species; or, 2) will not result in take to listed species (see Appendix A).

Based on your IPaC-assisted effects determination and jurisdiction from Table 2, your project review may be complete. **If your project is complete, do not proceed to Step 5 (i.e., you do not need to send any project information to PAFO).** If your project is not complete (i.e., you received a “**May Affect**” determination for one or more species or critical habitat on your **Official Species List**), see **Appendix A** for instructions on how to complete the determination process before moving to **Step 5**.

Step 5. Submit Project Information to PAFO

If you require additional coordination or consultation from the Service, **the following three items must be submitted** to IR1_ESPenn@fws.gov to initiate a project review with PAFO staff:

- 1) Your effects determination for each federally listed species and/or critical habitat on your **Official Species List** (see **Table A1** (Federal nexus) or **Table A3** (non-Federal nexus) in **Appendix A** for appropriate determination language).

2) Clear justification for your effects determination for each federally listed species and/or critical habitat on your **Official Species List** (see **Table A2** (Federal nexus) or **Table A4** (non-Federal nexus) in **Appendix A** for examples of clear justification).

3) Required Materials listed in **Appendix B**.

Note that we cannot provide concurrence or any required coordination until you have provided your effects determinations and justifications as outlined above.

If you do not have enough information to complete an effects determination and you require technical assistance, clearly state this in your email to PAFO.

Project materials should be submitted to IR1_ESPenn@fws.gov with the following naming convention in the email subject title: IPaC Number; Project Name; PNDI Number (if available); Federal Action Agency or company.

Example: 2021-0000210; Flowing Water Dam Removal Project_PNDI #799255; US Army Corps of Engineers

Once a complete review package is received by IR1_ESPenn@fws.gov, your project will be assigned to a biologist for review.

Should your project change, including the location, scope, or scale of the project, please revise your existing project in PNDI and IPaC (rather than starting a new project) and submit the updated materials to PAFO if needed.

Note: Projects will not be reviewed until all the above information is received. In addition, if your project is complete as indicated in Table 2, Table A1, or Table A3, you do not need to send the project information to PAFO. You can use this guidance document and your supporting determination documents to demonstrate compliance with the ESA.

Thank you for following the above guidance to complete project reviews under the ESA and to ensure your proposed project complies with ESA requirements.

Please contact our main office email at IR1_ESPenn@fws.gov (preferred) or our general office number at 814-298-4396 with any questions regarding this information.

Signed:

Jodie Mamuscia
Field Office Supervisor

Appendix A

Step-by-step instructions to assist in making effects determinations through an internal evaluation process (i.e., make a determination on your own)

A “**May Affect**” determination on your IPaC Dkey letter means that effects may occur to federally listed species or designated critical habitat. Therefore, should you receive a “**May Affect**” determination for listed species or critical habitat in your determination letter, further analysis is required through an internal evaluation process. The guidelines below will assist you with this process depending on whether there is a Federal nexus or non-Federal nexus for your project.

Federal Nexus

After receiving a “**May Affect**” assisted determination from IPaC for federally listed species or critical habitat, Federal action agencies must then conduct an internal evaluation process to make one of three determinations for each of the species or critical habitat that received this determination (see Table A1):

- 1) **No Effect;**
- 2) **May Affect, Not Likely to Adversely Affect;** or
- 3) **May Affect, Likely to Adversely Affect**

If you do not have enough information to make an effects determination, please see **Step 5** of the main document and submit materials for technical assistance, if desired.

Table A1. Effects Determinations and Next Steps for Projects with Federal Jurisdiction Using an Internal Evaluation Process after Receiving a “May Affect” IPaC-Assisted Determination.

Federal Action Agency Determination	Next Steps
No Effect (NE)	No further review is required by the Service (project complete) .
May Affect, Not Likely to Adversely Affect (NLAA)	Submit your NLAA determination to the Service for concurrence (go to Step 5 in the main document).
May Affect, Likely to Adversely Affect (LAA)	Submit your LAA determination to the Service for formal consultation (go to Step 5 in the main document).

To demonstrate your effects determination, we recommend making a table with three columns: species/critical habitat, effect determination, and rationale for your determination for each species/critical habitat (Table A2).

Table A2. Examples of Species Effects Determinations and Rationale for Federal Applicants.

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 there is minimal tree removal (0.2 acres), it will occur during hibernation (Nov 16 – March 31), 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 the critical habitat due to instream work within French Creek.

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 **NLAA** determination or a **LAA** 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 PAFO for review.

If “**No Effect**” determinations are made for each species and designated critical habitat on your **Official Species List**, the **Official Species List** letter and your determination table or Dkey letter can be used to document completion of ESA review, and there is no need to further coordinate with the Service 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.

If you need to submit project information to the Service, please see **Step 5** in the main document and **Appendix B** for further guidance on submission materials.

Non-Federal Nexus

After receiving a “**May Affect**” assisted determination from IPaC for federally listed species, non-federal project applicants must then conduct an internal evaluation process to make one of two determinations for each of the species that received this determination (see Table A3):

- 1) Project will not result in take, or
- 2) Project will result in take

If you do not have enough information to make an effects determination, please see **Step 5** of the main document and submit materials for technical assistance, if desired.

Table A3. Effects Determinations and Next Steps for Projects with No Federal Jurisdiction Using an Internal Evaluation Process After Receiving a “May Affect” IPaC-Assisted Determination.

Project Proponent Determination	Next Steps
Project will not result in take to listed species.	No further review is required by the Service (project complete) .
Project will result in take to listed species.	We recommend submitting your determination to the Service to discuss avoidance strategies and/or seek guidance for an incidental take permit (go to Step 5 in the main document).

If you are unsure about your determination, you may submit project information to the Service for further technical assistance, if desired.

To demonstrate your effects determination, we recommend making a table with three columns: species, effect determination, and rationale for your determination for each species (Table A4).

Table A4. Examples of Species Effects Determinations and Rationale for Non-Federal Applicants.

Species	Effect Determination	Rationale
Dwarf Wedgemussel	Project will not result in take to listed species	The proposed project will not impact aquatic habitat.
Indiana Bat	Project will not result in take to listed species	Suitable habitat is within the proposed action area, but there is minimal tree removal (0.2 acres), it will occur during hibernation (Nov 16 – March 31), and winter bat habitat will not be altered.
Bog Turtle	Project will result in take to listed species	The species is documented to occur within the action area and the proposed project will alter hydrology of the bog turtle wetland.

If you determine your project “**will not result in take**” for each species on your **Official Species List**, the **Official Species List** letter and your determination table or Dkey letter can be used to document completion of ESA review, and there is no need to further coordinate with the Service since the ESA does not require non-Federal entities to consult with the Service if they determine the proposed action will not result in take to federally listed species (50 CFR 17.22 and 50 CFR 17.32).

If you need to submit project information to the Service, please see **Step 5** in the main document and **Appendix B** for further guidance on submission materials.

Appendix B

Required Materials for Project Submission for both Federal and Non-Federal Applicants

Please include the following information when requesting a project review from PAFO:

- 1) PNDI receipt (if available) and PNDI number.
- 2) IPaC Official Species List, determination letter(s), and Project Code from the determination letter.
- 3) 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.
 - i. Acres of forest to be removed
 - ii. Caves or mines in or nearby the project area
 - iii. Wetlands and associated impacts
 - iv. Streams and associated impacts
- 4) A map or description of all areas to be affected directly or indirectly by the action, and not merely the immediate area involved in the action (i.e., for federal jurisdiction projects – the Action Area as defined at 50 CFR 402.02).
- 5) Information obtained by or in the possession of the Federal agency and/or project proponents concerning listed species and designated critical habitat in the Action Area or project area, respectively. This includes 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.
- 6) A description of the effects of the action and an analysis of any cumulative effects.
- 7) A summary of any relevant information provided by the applicant, if available.
- 8) 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.
 - i. Survey results
 - ii. [Bat Conservation Plan](#)
 - iii. Habitat assessments
 - iv. Biological assessment/evaluation