

FS-FWS-FERC-BLM ESA Coordination Call**Date/Time:** Tuesday, April 25, 2017 @ 1-2:30pm (ET)**Location:** Conference Call

Attendees	Bureau of Land Management (BLM)	Vicki Craft, Miriam Liberatore, Alison McCartney
	US Fish and Wildlife Service (FWS)	Glen Smith, Tiernan Lennon, Liz Stout, John Schmidt, Jennifer Stanhope, Troy Andersen, Cindy Shulz
	Federal Energy Regulatory Commission (FERC)	Kevin Bowman, Paul Friedman
	Forest Service (FS)	Doug Chaltry, Kent Karriker, Paul Arndt, Clyde Thompson, Karen Stevens, Laura Hise, JoBeth Brown, Tim Abing, Peter Gaulke, Mike Katharning, Dawn Kirk, Ava Turnquist, Carol Croy, Beth LeMaster, Jennifer Adams, Joby Timm, Karen Overcash, Steve Croy, Troy Morris
	Merjent	Jeff Mackenthun, Kristen Lintz
	Cardno	Lavinia DiSanto, Doug Mooneyhan, John Brewer
	Galileo Project, LLC	Lauren Johnston, Maria Martin, Peter Rocco

Objectives

- ✓ Discuss FERC role as lead agency for Endangered Species Act (ESA) Section 7 consultation.
- ✓ Clarify any questions regarding ESA Section 7 consultation.
- ✓ Clarify the application of the 4(d) rule

DECISIONS/DISCUSSION POINTS

- Kevin and Paul F confirmed the Natural Gas Act and the Energy Policy Act give FERC the authority to complete ESA Section 7 (Section 7) consultation for the entire route. FERC will produce one Biological Assessment (BA) and the FWS will produce one Biological Opinion (BO). Kevin also confirmed FERC completes a separate rare and/or sensitive species consultation component outside of the Section 7 consultation process.
- FWS confirmed it's the agency's responsibility to use the best available information in order to complete the BA and Section 7 consultation. Glen said it is much faster and with less work for the FWS if new information is used. Glen also said this avoids the problems associated with assuming species presence without recent studies, as this also creates undue work and might result in the proponent taking unnecessary conservation actions. He noted it is the proponent's decision whether or not to assume presence vs. conduct new surveys.
- Doug C noted assuming species presence can complicate the FS process. This is because if the proposed project is determined to have a substantial adverse effect on a species, the FS must then determine if that species will become of conservation concern, and additional planning rules with additional National Environmental Policy Act (NEPA) and public decision objection processes must be applied. It is thus also in FS interest to not assume presence absent recent surveys or additional research on best available information.

- Kevin and Paul F. confirmed the FERC can issue the Final Environmental Impact Statement (FEIS) with conditions on the FERC's order for a certificate of public convenience and necessity that construction cannot begin until Section 7 consultation and/or other consultations are complete.
- In the context of reducing impacts to the Indiana bat, the FS asked if time of year (TOY) restrictions on tree clearing in the proposed right of way (ROW) are necessary if the FS were to issue an incidental take permit (ITP). FWS confirmed the TOY restrictions are meant to reduce indirect impacts to a species, in this case the Indiana bat, by reducing indirect impacts due to habitat loss as a compounding factor.
- Glen confirmed the TOY restrictions are a standard impact mitigation and/or avoidance measure. Lavinia confirmed MVP has agreed to a tree clearing window to help minimize indirect effects to the Indiana bat. Glen confirmed the TOY restrictions apply to the entire route, as FERC has authority for Section 7 consultation and impact mitigation over the entire route.
- Paul F. said FERC plans to initiate consultation with the FWS by delivering a BA before the release of the FEIS in late June, 2017. He confirmed all surveys on the Jefferson National Forest are complete for the MVP project.
- Jennifer said there are still ACP surveys for Section 7 species that are not anticipated to be completed until July or August, 2017. Jennifer said she is concerned about these surveys and resulting reports being included in the BA if they are not yet complete. The FS is concerned they would not be able to propose an informed determination of effects if the BA is not complete. Jennifer noted that in her conversations with the FS Regional Office she was told the FS could not address the late studies through the permitting process for a project this large, in contrast to FERC's ability to include a condition their order.
- Kevin noted FERC allows project changes per the conditions of their Order after it is issued. Kevin said he understands the issue for the FS is that the FEIS needs to establish statutory authority for the FS to make amendments to their land and resource management plan (LRMP) in order to make the proposed project consistent with the plan, if approved.
- Kevin asked if FERC would be putting the FS in a position where they could no longer amend their LRMPs if the FEIS doesn't have all of the necessary data. Kent answered that the FS will be able to provide a better answer to Kevin's question after their review of the ACP Administrative FEIS. Kent's concern is the FS cannot complete analysis for a proposed amendment change if the impacts are not yet fully disclosed in a NEPA document. He added the proposed ACP project and associated potential LRMP amendments are under a high amount of public scrutiny. Doug C. said the FS is not regulated as the FERC is regulated, meaning FS does not have the same flexibility to make changes once their decision is made that FERC does per the Natural Gas Act directive to balance public necessity with environmental impacts. Kevin noted that FERC's flexibility is primarily designed to help deal with unanticipated discoveries rather than to 'fix' things or incorporate late information after the certificate has been issued.
- Paul F suggested the FS review the Grapevine, Texas vs. the DOT case regarding conditions to permits allowing survey and consultation completion post-decision.
- Kevin could not commit to a Section 7 consultation initiation timeline or document trigger for the ACP project, but that it's always FERC's preference to use the FEIS as a trigger. He said it will depend on when surveys are completed if they can be included in the FEIS, and this used to initiate consultation.
- Doug M summarized the FWS 4(d) rule as a standard list of restricted activities to reduce impacts to the northern long eared bat. The rule is meant to streamline consultation. The 4(d) rule includes restrictions on construction activities near occupied hibernacula and

maternity roost trees, in addition to restrictions on tree clearing between June 1st and July 31st.

- Doug M and Liz noted tree clearing for large projects usually occurs all at once along the project ROW. Doug said the TOY restrictions on clearing also help account for necessary mitigation measures required by the Migratory Bird Treaty Act.
- The FS asked if a Habitat Conservation Plan (HCP) was necessary for the project as there is an ITP being considered. The FWS confirmed an HCP is not necessary for this project as the FERC leadership provides a federal nexus for Section 7 consultation, even on private lands.
- Glen summarized the FWS Section 7 consultation timeline as follows (total 135 days):
 - Issuance of triggering document and formal letter from FERC requesting consultation
 - 30 days for FWS to review and determine if the triggering document meets their needs to initiate the consultation process.
 - 60 additional days to review available documents, request additional info, and fill in gaps.
 - 45 days to write the BO.
- FERC said the surveys on the MVP route are mostly complete. Any remaining biological surveys are not on public lands, and the lands they cover are not likely to have any regional forester sensitive species and/or species of conservation concern.