Instructions for Conducting Endangered Species Act Project Reviews using IPaC

U.S. Fish and Wildlife Service
Michigan 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 must determine whether their proposed projects may affect threatened and endangered species or designated critical habitat. In addition to the ESA, section 404 of the Clean Water Act of 1977 (CWA) regulates the discharge of dredged or fill material into waters (including wetlands) of the United States. Regulations require that activities permitted under the CWA (including wetland permits issued by the Michigan Department of Environment, Great Lakes, and Energy) do not jeopardize the continued existence of species listed as endangered or threatened.

The U.S. Fish and Wildlife Service (Service) developed the online Information for Planning and Consultation (IPaC) tool to help streamline the ESA review process. IPaC can assist users through the section 7 consultation process when a Federal agency authorizes, funds, permits, or carries out an action. Other project proponents without a Federal nexus may also use IPaC to review proposed projects for potential impacts to Federally-listed threatened and endangered species. The following instructions outline the process for how to use IPaC to obtain an official species list and use available assisted determination keys in order to help them make determinations on effects to listed species.

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. These instructions were developed by the U.S. Fish and Wildlife Service (USFWS)'s Michigan Ecological Services Field Office (MIFO) for projects located in the state of Michigan and may not be applicable to other states.

Process Overview and Summary

1) Define the Action and Action Area of your Project
2) Obtain a Species List in IPAC
3) Evaluate effects to threatened and endangered (TE) species and designated critical habitat, using one of the following options:
    a. Use Determination keys (Dkeys), if available and applicable, to evaluate effects in IPaC, and/or
    b. Evaluate the effects outside of IPaC
4) Additional consultation with the USFWS (when needed)

If you use a Dkey and your output letter indicates no further action is needed for all species, your TE review is complete. If you choose not to use available Dkeys, your project does not qualify for a Dkey, or your Dkey output letter indicates further action is needed for one or more species, you should continue on to another option in order to evaluate the effects of your projects to those species. If you evaluate the details of your project and conclude "no effect," document your findings, and your TE review is complete. If you cannot conclude "no effect," you should

coordinate/consult with the MIFO.

Step 1. Define the Action and Action Area of your Project

Before you begin working in IPaC, you need to consider the Action Area and "effects of the Action" as they are defined under the ESA's regulations. The Action Area includes all areas to be affected directly or indirectly by the action and not merely the immediate area involved in the Action. For example, for a culvert replacement that will change water-level elevations, the Action Area not only includes the areas where the culvert replacement will occur, but also the areas where water-levels will change. Other effects included in an Action Area are those that occur downstream of the immediate project area (e.g., areas affected by sedimentation, water quality changes, etc.). In another example, a construction project includes loud sounds. In this example, the Action Area encompasses all of the areas impacted by the sound. Lastly, the Action Area also includes areas that are used to help offset project impacts (e.g., areas where species are to be relocated, mitigation areas, etc.).

The Action Area is also determined by the "effects of the Action." The effects include all consequences to listed species or critical habitat that are caused by the proposed Action, including the consequences of other activities that are caused by the Action. A consequence is caused by the proposed action if it would not occur but for the proposed Action and it is reasonably certain to occur. Effects of the Action may occur later in time and may include consequences occurring outside the immediate area involved in the Action. For example, a Federal agency is consulting on the permitting of installation of an outfall pipe. A secondary, connecting pipe owned by a third party is to be installed and would not occur ''but for'' the proposed outfall pipe, and existing plans for the connecting pipe make it reasonably certain to occur. The secondary pipe is included in the Action Area, and any consequences to listed species or critical habitat caused by the secondary pipe would be considered within the effects of the Action for answering questions within IPaC.

Step 2. Obtain an Official Species List

- Go to the IPaC website: https://ipac.ecosphere.fws.gov/
  Select **GET STARTED**.
- You will be asked to define your project location (i.e., Action Area as described above). You can do this one of several ways:
  - 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 Shape File** button if you have a GIS shape file of your project area using a .zip folder containing all necessary files
  - Method 3: You may use the **Select by County** button if you are uncertain of your specific project location. You may also use the **Select by State** button for a general list of species statewide.
- 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. Click on the species to learn more about it, including project design guidelines (for some species) and a description of suitable habitat.

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** using the following suggested naming convention. Suggested format is: Name of your agency or company, project proponent (if applicable), project name, project code and/or application/permit I.D. number (e.g., U.S. Army Corps of Engineer permit number or Michigan's Department of Environment, Great Lakes and Energy (EGLE) permit application number).
  - Ex 1: Big Tree Consulting, City of Big Trees, Happy Lane Development, EGLE permit HGYL-6789-FAKE1
  - Ex 2: Army Corps of Engineers, Development Company, North Wetland Fill Project, PN 2022-01002
  - Ex. 3: NRCS, Smith Grassland Project, G678Smith
- For **Project Description,** <u>be sure to include details on the various components of your project, timing, and duration.</u> Please be sure your description addresses the "effects of the Action" (i.e., includes any applicable secondary actions). You will see your project name, project description, and project location on the following page. From here, 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 USFWS which includes an official species list that is valid for 90 days. This letter will be sent to you at the e-mail address you provided with your IPaC account.

If you need to update the species list, select "**Need an updated species list?**" on the IPaC homepage page. You will need the consultation code and e-mail address used to request the original species list. The consultation code and e-mail address are listed in the official letter. You will get an updated species list under the same consultation code that makes project tracking easier.

Step 3. 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 Species List—(1) IPaC Determination Keys or (2) Internal

Evaluation Process. In some cases you may choose to use both options; i.e., 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)

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 USFWS standing analyses. Qualifying projects can generate USFWS concurrence letters instantly through IPaC. Dkeys provide consistent and transparent outcomes, and significantly reduce the time to complete consultation for qualifying projects.

Three keys are available for projects in Michigan. Please note that only one assisted determination key may be completed per species for each project, so you should carefully review the descriptions of all available determination keys to select the most appropriate key for your project. Completing a key for a species will disable other keys that cover the same species for your project.

Table 1. Description of Dkeys available in Michigan

Name of key available in MI	Species covered	Types of projects that the key covers	Types of projects that do not qualify
All-Species Michigan Dkey	All species in MI	Routine, small-scale projects in some areas of Michigan may be able to get concurrence if applicants agree to certain conservation measures for some species.	Wind energy development, purposeful take, communication towers over 200 ft. tall, aerial or other broad application of chemicals
FHWA, FRA, FTA Programmatic Consultation for Transportation Projects	Indiana bat and northern long-eared bat (NLEB)	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
*NLEB Consultation and 4(d) Rule Consistency

Since most MI species lists in IPaC include multiple species, this single species key will only be usable through the All-species Michigan Dkey (as of February 2022) | Northern long-eared bat (NLEB) | Projects with potential effects (e.g., tree clearing) to NLEB. 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 that fall within a township section containing a known NLEB roost tree or hibernaculum |

If you have the potential for multiple species in your project area, the All-species Michigan Endangered Species Dkey is your best option. The All-Species Michigan Dkey includes the questions from the NLEB 4(d) Dkey, so we recommend projects use the Michigan Dkey rather than the NLEB 4(d) Dkey. To provide clarity for users on the best Dkey for projects *in the state of Michigan only*, the NLEB 4(d) Dkey will likely be disabled in February 2022.

To use a Dkey, follow the instructions below:

- After requesting a species list, you can click **Next Step: Determination Keys.** Or, from the Project Home, Click **Start Review**.
- Select **Evaluate** for the appropriate key
- Review the key description and click **Check If My Project Qualifies**

You will be asked Qualification Interview questions to determine whether the key applies to your project. The Dkey will ask you a series of yes/no questions. Select the appropriate radio button to indicate your response. If you make an incorrect selection, you can click on Change Answer to go back and change your response. If you answer questions that indicate the key does not apply, you will be notified that your project is outside the scope of the key and will not be allowed to continue (Figure 1).

3. Does the action involve the installation or operation of wind turbines?

🚫 Yes

CHANGE ANSWER

EVALUATION PROGRESS

Your project is outside the scope of this key. Contact the Michigan Field Office to coordinate on wind energy projects.

CONTINUE REVIEW

Figure 1. Screenshot example of a project that does not qualify for a Dkey. For this key, projects involving wind turbines do not qualify and must consider impacts to threatened and endangered species outside of the Dkey.

If your project qualifies for the Dkey, you will also be asked questions to help you reach an effects determination for species that are on your species list and covered by the key. You may be offered conservation measures to help avoid adverse effects to listed species. Continue to answer yes/no questions about your project, including whether you are willing to agree to conservation measures. For some questions, you can click on hyperlinks or hover over underlined text to get additional clarification. Some questions, called "semantic questions", are answered for you automatically based on previous input or spatial data embedded within the Dkey.

After you finish answering questions about your project, you will be given a preliminary determination for species covered by the Dkey. IPaC can then generate a letter for your records with the determinations and copy of all of the questions and answers about your project.

- Select **Generate Consistency (Verification) Letter** to receive a copy of the letter. At any time from your Project Home Page, you can view the species list and letter in **Documents**.

There are three potential determinations that can be generated by a Dkey (Table 2). "**No effect**" and "**not likely to adversely affect**" determinations will generate letters that document your Endangered Species Act compliance. Be advised that some letters may require a verification period. If you receive a "**May Affect**" determination, review your letter carefully. For some Dkeys/species, you may be able to conclude consultation with no further action. A "**May Affect**" determination generally means additional information is needed to fully evaluate potential effects to covered listed species; thus, additional coordination outside of the Dkey is likely needed in order to complete your review. If you have enough information to conclude "**no effect**" outside of the Dkey for those species for which the Dkey was not able to reach a conclusion (i.e., species that received a "**may affect**" determination in your output letter), you may do so using Option 3. If you have site-specific information that leads you to believe another determination is more appropriate for your project, you can and should proceed based on the best available information. If additional coordination with MIFO is needed (See Step 3), please include a copy of your letter in your correspondence with our office as it will help expedite our review of your project. If you have questions specific to the Michigan Dkey, you can send questions to MIFO_Dkey@fws.gov.

Finally, remember that if your project doesn't qualify for a determination key, or if you prefer for any reason, you can proceed to Option 2, Make a Determination on Your Own.

Table 2. Possible effects determinations at conclusion of Dkey

Dkey Determination	Description	Dkey Result
No effect	There will be no impacts, positive or negative, to Federally-listed species or designated critical habitat from the proposed action.	Consistency letter that shows you've met your consultation requirements under the Endangered Species Act
Not likely to adversely affect	All effects to Federally-listed species or designated critical habitat from the proposed action would be insignificant, discountable, and/or completely beneficial.	Verification letter (if Federal agency) or Consistency letter (if non-Federal representative); 30 day "verification period" for concurrence for Federal projects
May affect	The Dkey could not rule out the potential for adverse effects. In some cases, the activity is covered by an existing 4(d) rule or formal consultation. Other times, additional information is required in order to complete the review.	May Affect letter – review language carefully to see whether additional coordination is needed or if a "verification period" applies

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 determination key should expedite your review. If you choose to make an effects determination on your own, you may do so. If the project is a Federal action, you may want to review our section 7 step-by-step instructions before making your determinations.

In IPaC, after evaluating Dkeys, you may be given the option of using the Consultation Package Builder (CPB). The CPB is an in-development functionality, aiming to be an interactive, step-by-step process that may help IPaC users prepare full consultation packages while leveraging USFWS data and recommendations, including conservation measures designed to help users avoid or minimize effects to listed species.

For projects in Michigan, we recommend using our available All-species Michigan Determination key for most projects. Because of the availability of this Dkey, **we do not recommend using the CPB at this time.**

After completing a Dkey, you can click **Exit Review** to return to your **Project Home** page.

Step 4: Additional Consultation with USFWS (when required)

When a project may affect listed species or designated critical habitat, and you do not have a Dkey output that indicates no further consultation is needed, then consultation with USFWS will be required for any actions with a Federal nexus. For projects without a Federal nexus that may adversely affect a listed species, please contact our office to assist you in determining recommended next steps.

The preferred method for submitting your project description and effects determination (if concurrence is needed) is electronically to EastLansing@fws.gov. **Please submit your IPaC-generated species list with your request.** After submitting your project electronically to this email address, your project will be assigned to a biologist, and the review process will be initiated. When inquiring about the status of your project, please include the Consultation Code from your IPaC letter.

Information Needed for Consultation with USFWS (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.

(2) A Federal agency may submit existing documents prepared for the proposed action such as NEPA analyses or other reports in substitution for the initiation package outlined in this paragraph (c). However, any such substitution shall be accompanied by a written summary specifying the location of the information that satisfies the elements above in the submitted document(s).