

Questionnaire for potential applicants for incidental take authorization under
Section 10(a)(1)(B) of the Endangered Species Act

Respond to these questions to help decide if you need an Endangered Species Act (ESA) permit:

1. Keeping in mind that the ESA does not apply to take of plants incidental to otherwise lawful activities, are there ESA listed species present in the area where your activity will occur or will they be present at some point in the duration of your activity?

Yes? Then proceed to question 2.

No? Then you do not need a permit.

2. Is it likely that any of these listed species will be exposed to your activities (or the results of your activity) during any of the various phases of your activity (construction, operation, maintenance, etc.)?

Yes? Then proceed to question 3.

No? Then you do not need a permit.

Review questions 3, 4, 5, and 6 to determine if the exposure from your activity to the listed species constitutes prohibited “take” under the ESA. A permit under section 10 (a)(1)(B) of the ESA does not cover purposeful take. As you review the questions below remember that only take that is “incidental” to an otherwise lawful action can be covered under an incidental take permit.

3. If your activity overlaps with the listed species at some point of its duration, will that exposure likely result in any of the following actions to the listed species: pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting or attempting to engage in any such conduct? Keep in mind that some of these definitions most likely only apply to purposeful take (e.g. hunting, shooting).

Yes to incidental take? Then you likely need a permit.

No? Then proceed to question 4.

4. Is your activity likely to harass a listed species? To answer this question ask whether your activity, through an intentional or negligent act or omission, is likely to annoy the listed species to such an extent as to cause **an injury** to the species by **significantly disrupting normal behavior patterns (e. g. breeding, feeding or sheltering, etc.)**?

Yes? This take is not permitted as it is not “incidental.”

No? Then proceed to question 5.

5. Is your activity likely to result in an act that actually injures or kills a listed species?

Yes? Then you likely need a permit.

No? Then proceed to question 6.

6. Is your activity likely to harm a listed species through habitat modification? To answer this question, ask:

- a. Is my activity likely to result in **significant** habitat modification or degradation?
- b. Will that modification or degradation **significantly impair** essential behavior patterns, including breeding, feeding, or sheltering?
- c. As a result of a. and b. above, is it likely there will be **an actual injury or death** to a listed species?

Yes to all three questions? Then you can anticipate take through habitat modification and likely will need a permit.

No? Then you have not satisfied the definition of “harm” through habitat modification.

Ultimately you, as a potential applicant, must decide whether it is reasonable to conclude that the proposed action is likely to result in the take of a listed species. If such an outcome is unlikely, you do not need to seek a section 10 permit.