



# Public Roads and Federally Listed Species: Formal Consultations and Surveys

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U.S. Fish and Wildlife Service



# U.S. Fish and Wildlife Service

- Ecological Services
  - Endangered Species
  - Contaminants
  - Conservation Planning Assistance
- Endangered Species Act
  - Congress passed the Endangered Species Act (ESA) in 1973
  - Recognized that our rich natural heritage is of "esthetic, ecological, educational, recreational, and scientific value to our Nation and its people"
  - The purpose of the ESA is to protect and recover imperiled species and the ecosystems upon which they depend



Our mission is to work with others to conserve, protect and enhance fish, wildlife and plants and their habitats for the continuing benefit of the American people.



# Objectives

Go over the section 7 process for LAP projects and in IPaC

Review what to do when a project can't get concurrence

Review surveys approaches for frequently encountered species

Discuss timelines for Section 7 consultation and where in planning windows you should begin to consider federally listed species

Discuss what can be done before consultation to improve efficiency

Review benefits of early engagement for federally listed species in the planning process

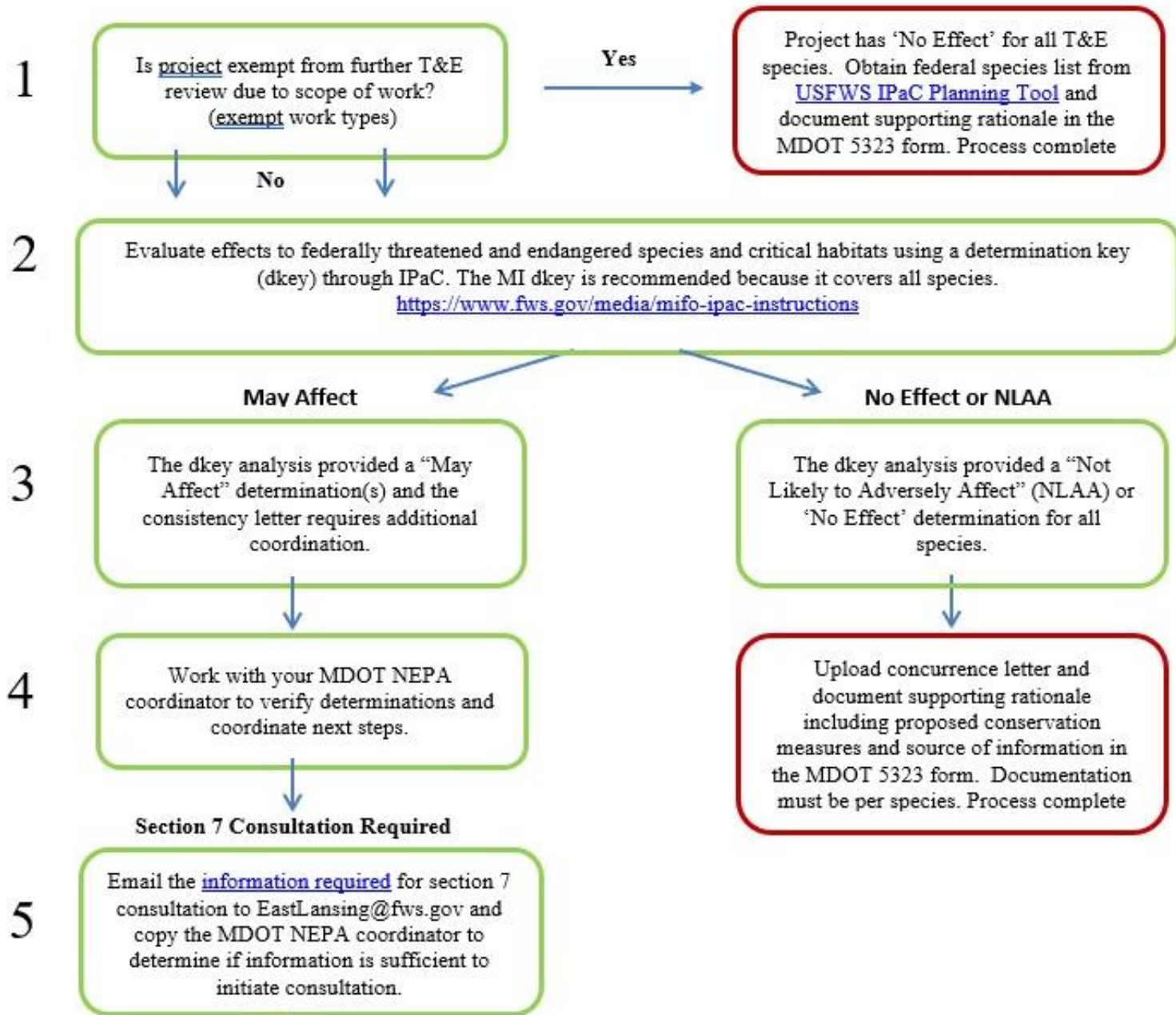
# Endangered Species Act Overview

- Section 2: Findings, Purpose, and Policy
- Section 3: Definitions
- Section 4: Determination of Endangered Species and Threatened Species (Listing, Critical Habitat Designation, Recovery, Monitoring)
- Section 5: Land Acquisition
- Section 6: Cooperation with the States
- Section 7: Interagency Cooperation
- Section 9: Prohibited Acts
- Section 10: Exceptions (Permits)
- Section 11: Penalties and Enforcement

# Section 7 Overview

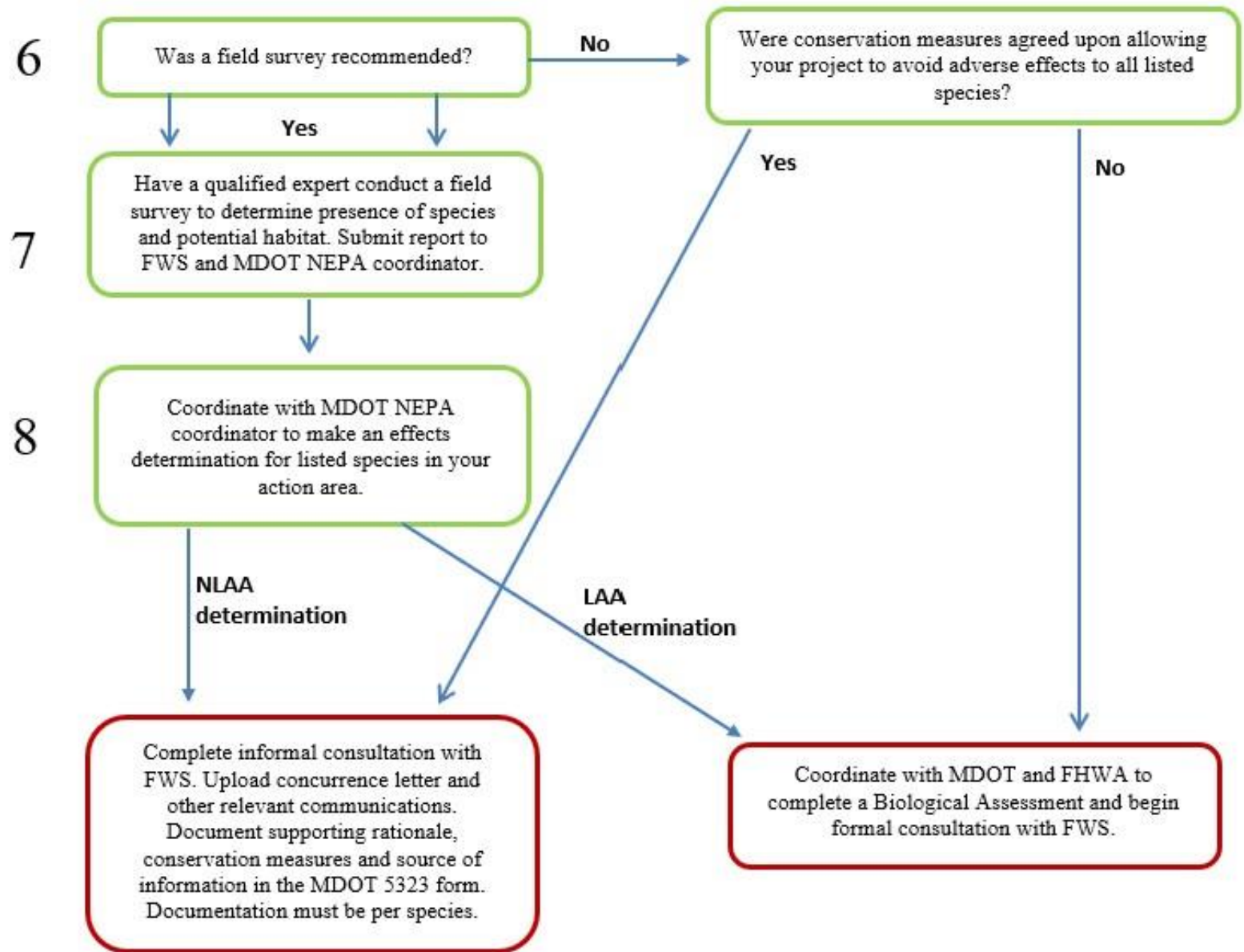
- Prioritizes the ESA in federal actions and require agencies to address the impacts of their actions on listed species
  - Section 7(a)(1) - Requires that federal agencies utilize their authority by carrying out programs for the conservation of listed species
  - Section 7(a)(2) - Ensure that actions federal agencies "authorize, fund, or carry out" are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat
- Regulations at [50 CFR 402](#) defines the consultation process
- Consultation is required if an action may affect a listed species
- Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct
- An adverse affect is a negative impact to an individual of a listed species

# Section 7 Process for LAP Projects



# Section 7 Process for LAP Projects

\*\*All Federally listed species are now also State listed. Additional coordination with Michigan DNR, not shown here, may be necessary.



# Section 7 Process in IPaC

Determine if species may be present in the action area (Official Species List from IPaC)



Consider if the species' habitat is present in the action area



Determine if your proposed action may affect the species or its habitat



If you make a may affect determination, you may need to consult outside of the dkey

## Step 1: Request an official species list

An official species list is a letter from the local U.S. Fish and Wildlife Service field office that assists in the evaluation of potential impacts of your project. It includes a list of species that should be considered under [Section 7](#) of the Endangered Species Act, a project tracking number, and other pertinent information from the field office.

### Does this project require an official species list?

Federal agencies are required to "request of the Secretary of Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action" ([Section 7](#) of the Endangered Species Act).

This requirement applies to projects that are **conducted, permitted, funded, or licensed** by any Federal agency.

**NOTE:** Generating an official species list does not start the consultation clock for a project.

THUMBNAILS LIST
SPECIES GUIDELINES -

### Mammals

|  |  |
|--|--|
| <div style="background-color: #f00; color: white; padding: 2px; font-weight: bold;">Endangered</div> <p style="font-size: small; text-align: center;">Northern Long-eared Bat<br/><i>Myotis septentrionalis</i><br/>Wherever found</p> | <div style="background-color: #f00; color: white; padding: 2px; font-weight: bold;">Proposed Endangered</div> <p style="font-size: small; text-align: center;">Tricolored Bat<br/><i>Perimyotis subflavus</i><br/>Wherever found</p> |
|--|--|

### Reptiles

|   |
|---|
| <div style="background-color: #f00; color: white; padding: 2px; font-weight: bold;">Threatened</div> <p style="font-size: small; text-align: center;">Eastern Massasauga<br/>(=rattlesnake)<br/><i>Sistrurus catenatus</i><br/>Wherever found</p> |
|---|

## Step 2: Evaluate determination keys

The U.S. Fish and Wildlife Service has performed up-front analyses for certain project types, agencies, and species. The analyses have been compiled into *determination keys*, a simple interview process to help you arrive at a recommended determination for some species in your project area.

There are 3 determination keys that may apply to your project. Each determination key starts with a qualification interview to see if the key is appropriate for your project.

- All Species Michigan Determination Key

Release date: September 11, 2023

This key is intended to streamline review of projects for potential effects to Federally listed threatened and endangered species and designated critical habitat. This key covers all Michigan species and incorporates the rangewide NLEB dkey as an option.

Subject: Consistency letter for 'Sample Project' for specified federally threatened and endangered species and designated critical habitat that may occur in your proposed project area consistent with the Michigan Determination Key for project review and guidance for federally listed species (Michigan Dkey).

Dear Michelle Kane:

The U.S. Fish and Wildlife Service (Service) received on **September 18, 2023** your effect determination(s) for the 'Sample Project' (the Action) using the Michigan Dkey within the Information for Planning and Consultation (IPaC) system. The Service developed this system in accordance with the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.).

Based on your answers and the assistance of the Service's Michigan Dkey, you made the following effect determination(s) for the proposed Action:

| Species  | Listing Status         | Determination |
|--|------------------------|---------------|
| Eastern Massasauga (=rattlesnake) ( <i>Sistrurus catenatus</i> )   | Threatened             | May affect    |
| Hungerford's Crawling Water Beetle ( <i>Brychius hungerfordi</i> ) | Endangered             | No effect     |
| Monarch Butterfly ( <i>Danaus plexippus</i> )                      | Candidate              | No effect     |
| Northern Long-eared Bat ( <i>Myotis septentrionalis</i> )          | Endangered             | No effect     |
| Tricolored Bat ( <i>Perimyotis subflavus</i> )                     | Proposed<br>Endangered | No effect     |

**Please carefully review this letter. Your Endangered Species Act requirements are not complete.**

Your project is in the vicinity of a National Wildlife Refuge (NWR), <https://fws.gov/visit-us/refuges>. The intent of this letter is limited to assisting you in evaluating the effects of your action on Federally listed species in Michigan; other FWS programs may have additional input on your



# If Your Project Does not Fit a Dkey

## Informal Consultation

- **Not Likely to Adversely Affect** determination for one or more species
- Need to provide a project description
- Receive an informal concurrence letter from FWS within **60 days**
- Can be completed by non-federal representative
- Surveys may be recommended

## Formal Consultation

- **Likely to Adversely Affect** determination for one or more species
- Need to write a **Biological Assessment**
- Receive a **Biological Opinion** from FWS within **135 days**
- Must be completed by the federal action agency
- Surveys may be recommended

# Early Coordination Preparation

- Detailed project plans and area of impact
  - Extents of project, typical processes, equipment
- Timing of action
  - Estimated project start and end times
  - Duration of project events or phases
- If species/habitat is actually present in the action area
  - Recommended early coordination with FWS (e.g., before you go)
  - Habitat assessments
  - Survey results



# Why do a Survey?



High-quality analysis and documentation ensure accurate effects determinations



Surveys give a better idea of how the project will impact the species and where in the action area the species occurs



If species is absent, formal consultation may not be necessary



Refine best management practices implementation

# Species Where Surveys May Be Recommended



Federally listed  
mussels



Federally listed  
bats



Federally listed  
plants



Hungerford's  
crawling water  
beetle



Eastern  
massasauga  
rattlesnake

- Check survey protocols to determine how long surveys are valid for (generally 1 – 5 years)
- Review Species List, as other species may also require surveys

# Surveys for Federally Listed Mussels

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- Project types:
  - Work below the ordinary high-water mark
  - Work that may impact water quality
- Where:
  - Group 3 streams
  - [MNFI MI Mussel Mapper](#)
- When:
  - June 1 – October 15
  - Water temp > 50°F, Air temp 50-90°F
- [Survey protocol](#) available



# Surveys for Federally Listed Bats

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- Project types:
  - Bridge work that would disturb roosting spaces
  - Large scale active season tree clearing
- Where:
  - Bridges below the 3<sup>rd</sup> county tier
  - Tree removals statewide
- When:
  - Bridge assessments and Presence/Absence surveys May 15 – Aug 15
- [Bridge assessment guidance](#) and [data sheets](#) available
- [Range-wide survey guidelines](#) available



# Surveys for Federally Listed Plants

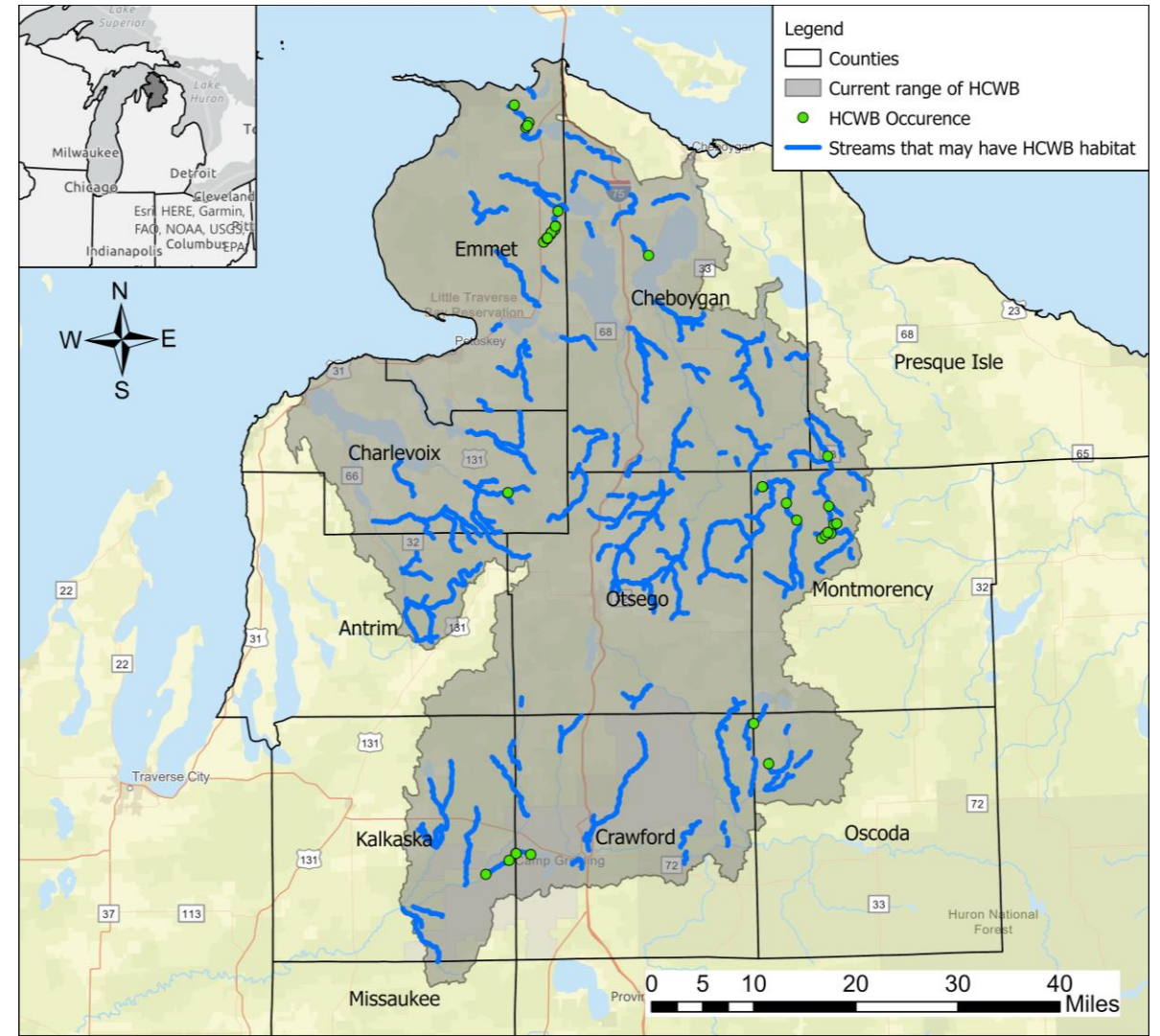
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- Project types:
  - Ground disturbance
  - Hydrology impacts
- Where:
  - Listed plant habitat
  - Most are coastal or associated with water
- When:
  - During growing/flowering season for that species
- Contact Michigan Field Office for information about surveying for different species



# Surveys for Hungerford's Crawling Water Beetle

- Project types:
  - Culvert or bridge replacements
  - Ditching
  - Any work that may impact water quality
- Where:
  - Suitable streams in Antrim, Charlevoix, Cheboygan, Crawford, Emmet, Kalkaska, Montmorency, Oscoda, Otsego, and Presque Isle counties
- When:
  - May 1 – October 31
- [Survey protocol and shapefile of potential streams available](#)





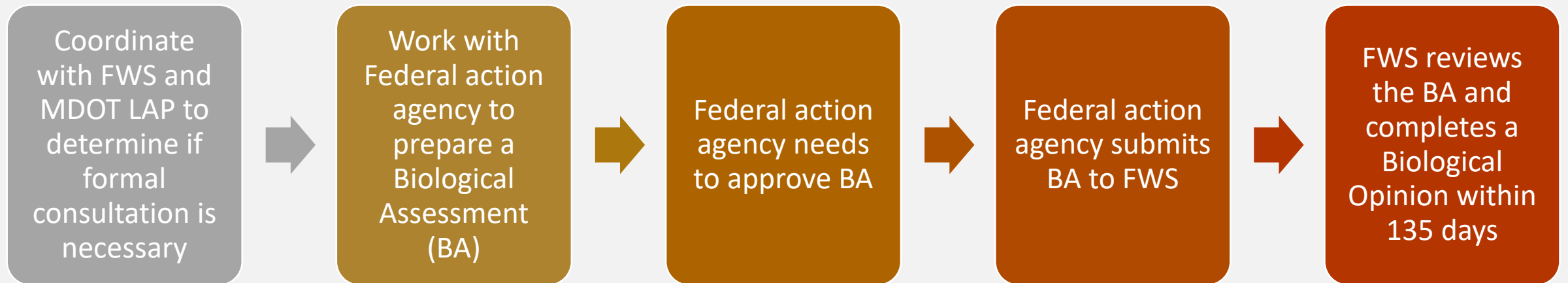
# Surveys for Eastern Massasauga Rattlesnake

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- Project types:
  - Ground disturbance
- Where:
  - Tier 1 habitat (IPaC or MNFI review)
- When:
  - EMR active season
  - Northern LP: May 1 – October 1
  - Southern LP: April 15 – October 15
- New survey protocol in development!



# Formal Consultation Process



# Biological Assessment Outline

## Introduction

- Purpose of the document and general project goals

## Project description

- Describe what needs to happen in order to reach the final goal
  - “When, where, and how”
- It may be necessary to break the project down into steps or phases
- Identify any conservation measures that will be applied to the project
  - Also called Best Management Practices (BMPs), Avoidance and Minimization Measures (AMMs), Project Design Features (PDFs)

## Action Area

- The areas that will be impacted directly or indirectly by the project
- The action area is determined by the effects of the action
- The action area also includes areas used to help offset project impacts

# Action Area

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- Must include all direct and indirect effects caused by the proposed action
- This includes the consequences of other activities that are caused/facilitated by the action
  - "But-for..." test



# Biological Assessment Outline

## Species and Critical Habitat Considered

- Describe the species or critical habitat that occur within your action area
- Provide any information on known occurrences, surveys, and suitable habitat distribution

## Effects Analysis

- Describe how the different elements/phases of the project interact with the species, suitable habitat, or critical habitat and anticipated response

## Conclusion and Effects Determination

- Use the rationale provided in the above sections to determine the overall effect of the project on each species and critical habitat

# Formal Consultation Considerations



Be proactive and engage with us early



Think about if you may need formal consultation during project scoping



Can coordinate with FWS before initiating consultation



FWS can provide advice on whether surveys are necessary and what information will be needed



## Ending Thoughts

- How can we be more engaged earlier in the process?
- What is the best way for us to engage with you?
- What resources could we provide that can help you with the consultation process?

# Additional Resources

- [FHWA Guidance on Section 7 Consultation](#)
- [FHWA Environmental Review Toolkit](#)
- [FWS Midwest Section 7 Technical Assistance Website](#)
- [FHWA BA Template](#)
- [IPaC website; Instructions for IPaC in MI; and Video Instructions for MI Dkey](#)
- [Wildlife Friendly Erosion Control](#)
- [Guidance Documents Associated with the Michigan Dkey](#)







# Any Questions?

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