

Guidance for Completing Project Reviews Under the Endangered Species Act

U.S. Fish and Wildlife Service
New Mexico 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 needs to determine whether their proposed projects may affect threatened and endangered species or designated critical habitat. The following step-by-step instructions outline the process for how to make this determination, and if necessary, how to initiate consultation with the New Mexico Ecological Services Field Office (NMESFO) when a Federal agency authorizes, funds, permits, or carries out an action.

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.

Note: If additional information is needed or you want personal assistance, please contact Jodie Smithem at (505) 761-4762 or our main office number at (505) 346-2525.

Step 1. Obtain an Official Species List

- Go to the Information for Planning and Consultation (IPaC) website (<https://ecos.fws.gov/ipac/>). Select **GET STARTED**.
- 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 Shape File** button if you have a GIS shape file of your project area.
 - 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. However, 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** and provide a **Project Description**.

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 U.S. Fish and Wildlife Service 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. You can now exit the IPaC website.

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 2. Make an Effects Determination

Once you obtain your official species list, you are finished with IPaC and should continue to the second phase of the ESA review: making an effects determination for each listed species or designated critical habitat that could potentially be affected by the proposed project, including any interrelated and interdependent actions. Interrelated actions are those actions that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those actions that have no independent utility apart from the action under consideration. The “but for” test should be used to determine if an action is interrelated and/or interdependent. For example, “but for” the construction of an access road, a communications tower could not be built. Therefore, both the access road and communications tower need to be considered in the effects determination. Conduct your effects determinations using the process described below.

We are aware that the official species list that you obtain from IPaC may include species that are not likely to occur in your project area. However, one of the three following effects determinations should be applied to each species identified on your official species list, as well as for each designated critical habitat area identified as overlapping with your project location:

- “**No effect**” 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.
- “**May affect, is not likely to adversely affect**” means that all effects to federally-listed species or designated critical habitat from the proposed action would be insignificant, discountable, or completely 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. Completely beneficial effects include entirely positive effects without any adverse effects to the species.

- **“May affect, is likely to adversely affect”** 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 completely beneficial. Adverse effects can result from habitat loss, habitat alteration, or impacts to the species life history needs. Before making this determination, we highly recommend contacting the NMESFO first to explore additional actions or modifications to the proposed project that could minimize or avoid adverse effects on federally-listed species or designated critical habitat.

To demonstrate your effects determination, we recommend you make a table with three columns: species/critical habitat, effect determination, and rationale for your determination for each species/critical habitat. For example:

| Species/Critical Habitat | Effect Determination | Rationale |
|--|---|--|
| Loach minnow | No Effect | The proposed project will not impact aquatic habitat. |
| Southwestern willow flycatcher | May affect, is not likely to adversely affect | Suitable habitat is within the proposed action area, but the species is not likely to be adversely affected by the project, because all associated construction would occur during the non-nesting season and not result in the removal of suitable habitat. |
| New Mexico meadow jumping mouse | May affect, is likely to adversely affect | The species is documented to occur within the action area and the proposed project will remove two acres of New Mexico meadow jumping mouse designated critical habitat. |
| New Mexico meadow jumping mouse Critical Habitat | May affect, is likely to adversely affect | The proposed project will remove two acres of New Mexico meadow jumping mouse designated critical habitat. |

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 habitats, including direct effects of interrelated and/or interdependent actions.
- **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), including indirect effects of interrelated and/or interdependent actions.

- **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 “may affect, is likely to adversely affect” determination or a “may effect, is not likely to adversely affect” 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 the NMESFO for review.

The ESA does not require Federal agencies to consult with the U.S. Fish and Wildlife Service if the action agency determines their Federal action has "no effect" on federally listed species or designated critical habitat. Therefore, if “no effect” determinations are made for each species on your list, the official species list letter and your determination table can be used to document completion of ESA review, and there is no need to continue to Step 3. 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.

Step 3. Submit your project to the NMESFO

The preferred method for submitting your project description and effects determination is electronically to nmesfo@fws.gov. After submitting your project electronically to this email address, your project will be assigned to a biologist and the review process will be initiated.

If you make a “may affect, is not likely to adversely affect” determination for any species or designated critical habitat on your list, you should submit a copy of your official species list letter, your effects determination (including supporting information, such as a biological assessment), and a request for concurrence. The NMESFO will review all information provided that supports the determination and either concur or not concur with the determination. If we concur with the “may affect, is not likely to adversely affect” determination, we will respond with an official concurrence letter, and the consultation will conclude informally. If we do not concur with your determination, we will respond with additional recommendations for how to proceed.

If you make a “may affect, is likely to adversely affect” determination for any species or designated critical habitat, you should submit your official species list letter, your effects determination (including supporting information, such as a biological assessment), and a request to enter into formal consultation. However, before submitting this request, we strongly recommend contacting us first to explore additional actions or modifications to the proposed project that could minimize or avoid adverse effects on federally-listed species or designated critical habitat. If such project adjustments or measures are not practicable, formal consultation would be required. For more information regarding formal consultation, please see the Service's Consultation Handbook at www.fws.gov/endangered/esa-library/index.html#consultations.

Please feel free to contact Jodie Smithem at 505-761-4762 or our main office number at (505) 346-2525 if you have any questions regarding this information.