

REGION 3 WSFR SECTION 7 EVALUATION DOCUMENTATION

PHASE 1: COMPLETED BY GRANTEE

(See Phase 1 Instructions for Completion)

State: _____ Grantee: _____ Grant Program(s): _____

Grant Title and Number (add amendment no): _____

I. Location:

A. List counties where grant activities will occur.

B. Describe the action area (see instructions).

II. Species/Critical Habitat:

A. Species information

1. Using the FWS web site (<http://www.fws.gov/midwest/Endangered/>), list species that are/or may be present in the county(ies):

2. List species, from "1." above, that are not in the action area, and explain why:

B. Using the FWS web site, identify whether federally designated or proposed critical habitat is present within the action area:

*Note: If II.A and II.B above have no species or critical habitat, skip sections III and IV and go to V.

III. Description of Proposed Action: In the space provided or on an attached sheet, describe the action(s) in sufficient detail so that the potential effects of the action can be identified and fully evaluated.

IV. Description of Effects: In the space provided or on an attached sheet, describe the effects, including beneficial, of the project actions on the identified species, species habitats and federal critical habitat (see II above).

V. Recommended Determination(s) of Effect(s): For all species and critical habitat identified in the

action area, mark (X) the appropriate determinations.

A. Listed, Proposed and Candidate Species

___ a) *“No Effect”*

List species for which this recommendation is applicable (or attach list): _____

___ b) *“May Affect, but is Not Likely to Adversely Affect”*

List species for which this recommendation is applicable (or attach list):

___ c) *“May Affect, and is Likely to Adversely Affect”*

List species for which this recommendation is applicable (or attach list):

B. Federal Designated and Proposed Critical Habitat

___ a) *“No Effect”* to Critical Habitat

List critical habitat(s) for which the recommendation is applicable. _____

___ b) *“May Affect, but is not likely to Adversely Affect”*

List critical habitat(s) for which the recommendation is applied. _____

___ c) *“May Affect, and is Likely to Adversely Affect”*

List critical habitat(s) for which the recommendation is applied. _____

Grantee Signatures:

Prepared by:

Name/Title: _____

Signature: _____ Date: _____

Telephone No. _____ email: _____

Reviewed by:

Name/Title: _____

Signature: _____ Date: _____

Telephone No. _____ email: _____

Instructions for Fish & Wildlife Service Region 3 Section 7 ESA Phase 1 Documentation:

Table of Contents:

General	1
Background	1
Summary of Phase I Documentation	1
The Phase 1 Documentation (Instructions)	2
Definitions	4

GENERAL:

Background:

Section 7(a)(2) of the Endangered Species Act (16 USC 1531 et seq.) states that each Federal agency shall, in consultation with the Secretary of the Interior, insure that any action they authorize, fund, or carry out is not likely to **jeopardize** (note: bolded for emphasis) the continued existence of a listed species or result in the **destruction** or **adverse modification** of designated critical habitat. By Service policy (734 FW 3), candidate species are treated as if they are proposed for listing. Service units will consult or confer with the appropriate Service Ecological Services field office on actions they authorize, fund, or carry out that may affect listed, proposed or candidate species or designated or proposed critical habitat. The Fish and Wildlife Service (Service) Director's Order 194 - Intra-Service Section 7 Consultation Procedures incorporating the agreement between the Wildlife and Sport Fish Restoration Program (WSFR) and Ecological Services allows WSFR to make determinations of “no effect” and “not likely to adversely affect” but is required to consult with the appropriate Service Ecological Services field office when a funded action is considered to “likely to adversely affect”. We recommend the grantee contact Service field offices for early coordination to reduce or eliminate potential adverse effects of the proposed action.

Summary of Phase 1 Documentation:

These are instructions for completing Phase 1 of the Region 3 WSFR section 7 Evaluation documentation. The Phase 1 documentation and the instructions are derived from the Service Final Intra-Service Consultation Handbook (March 1998).

The objective of the Phase 1 documentation and instructions is to ensure accurate, adequate information is provided in order that Service staff may complete the section 7 process. The State must provide enough information on any listed, proposed, or candidate species and designated or proposed critical habitat for Service WSFR staff to assess the proposed action’s effect on these species or their critical habitat. The information must be **action area** specific (see definitions section). In summary, enough information is needed to understand the action, where it will occur, and its effect (both adverse and beneficial) on the species/critical habitat to support the recommended determination all in concise and convincing language. Per ESA we (Service) are required to use the best scientific and commercial data available. The evaluation of the proposed action must consider direct and indirect effects on individual members of listed, candidate, or proposed species, as well as designated and proposed critical habitat of these species. **An evaluation at the level of the individual is the trip-wire used to determine effects on the population.**

THE “PHASE 1” DOCUMENTATION (Instructions):

“State”: Self explanatory

“Grantee”: Self explanatory

“Grant Program”: One or more federal assistance programs that are funding the proposed action(s).

“Title and Number”: Write the grant title, grant number, and, if an amendment, list amendment number.

“I. Location:”

“I.A. List counties...: (self explanatory)

“I.B. Describe the action area.” Describe the action area including the physical boundary and existing habitat where activities/actions would occur. Note that the action area includes all areas to be affected **directly or indirectly** by the Federal action and any interrelated or interdependent actions. Therefore, **the action area is not limited to the footprint of the action.**

“II. Species/Habitat/Critical Habitat”: Using the Service web site (<http://www.fws.gov/midwest/Endangered/>), identify any listed, candidate, or proposed species, suitable habitat, and designated or proposed critical habitat that is present in the action area.

“III. Description of Proposed Action”:

Describe the purpose of the proposed action(s), the specific “on the ground” activities/actions, and how they will be conducted. Provide perspective, where possible, by describing the magnitude and duration of the specific activities/actions. These descriptions should be detailed enough so the reader can completely understand all components of the proposed action(s).

When other documents are referenced, the following two principles **must** be followed: 1) A copy of each referenced document must be supplied to the WSFR office, and 2) The citation must identify the specific location of the information by page and paragraph. For a lengthy description, attach an additional page.

“IV. Description of Effects”:

Describe the effects (both positive and negative) of the action on the listed, candidate, or proposed species and designated or proposed critical habitats described in Section I. When more than one species or critical habitat is involved, provide an explanation of effects for each species or critical habitat.

The description of effect should be both qualitatively and quantitatively, to justify, in clear and concise language, the recommended effect determination(s) in Section IV. Include, or refer to, which best management practices will be used and how they will avoid adverse effects. Also describe the direct and indirect affect on existing habitat, other than proposed or designated

critical habitat, for listed, proposed, and candidate species where those species are known or likely to occur in the action area. For a lengthy description, attach an additional page.

“V. State Recommended Determination(s) of Effect”: In the spaces provided, or on attached sheets:

“A. Listed, Proposed, and/or Candidate Species”: For each species listed in Section I of this documentation, check your recommendation for one of the three determination options provided. Indicate, in the spaces provided, to which species the recommendation applies.

“B. Federal Designated and/or Proposed Critical Habitat”: For the Critical and/or Proposed Critical Habitat listed in Section I check your recommendation for one of the three determination options provided. Indicate, in the spaces provided, to which critical habitat unit the recommendation applies.

For A and B, above select from the following recommended determinations:

No Effect (species or Critical Habitat). This conclusion is reached if the proposed action and its interrelated and interdependent actions will not directly or indirectly affect listed species or critical habitat in any way. Recommend this determination **only** when you have evidence (data) that the action will be done at times or in habitats where no **individuals or critical habitat** will be present or affected. You must provide a rationale for this recommendation. Formal section 7 consultation is not required when the no effect conclusion is reached.

May Affect, but is Not Likely to Adversely Affect (species/critical habitat). This conclusion is appropriate when effects to the species or critical habitat are expected to be discountable, insignificant, or completely beneficial. Discountable effects are those that are extremely unlikely to occur. Insignificant effects relate to the size of the impact (and should never reach the scale where take occurs). Beneficial effects are positive effects without any adverse effects to individuals or critical habitat. If **any individual** is to be trapped, handled or tagged, the appropriate recommendation is “May Affect, Likely to Adversely Affect”.

May Affect, and is Likely to Adversely Affect (species/critical habitat). This conclusion is reached if any adverse effect to listed species or critical habitat may occur as a direct or indirect result of the proposed Service action or its interrelated or interdependent actions, and the effect is not discountable, insignificant or beneficial. Recommend this determination if the action results in adverse affects to an individual or a portion of the critical habitat and the overall effect of the proposed action is beneficial.

Grantee Signatures

Two State-authorized individuals who are knowledgeable about the action and the Region 3 section 7 process must sign the Phase 1 documentation. Normally those individuals are the State Endangered Species Coordinator and the State Federal Aid Coordinator. Spaces are provided for typed or printed name and title of signatories as well as telephone numbers and email addresses.

DEFINITIONS

Action area - All areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action. [50 CFR §402.02] Therefore, it is the immediate area where the proposed action will occur, as well as any other areas where direct or indirect impacts of the action may be expected.

Affect/effect - to affect (a verb) is to bring about a change ("The proposed action is likely to adversely affect piping plovers nesting on the shoreline"). The effect (usually a noun) is the result ("The proposed highway is likely to have the following effects on the Indiana bat").

"**Affect**" appears throughout section 7 regulations and documents in the phrases "may affect" and "likely to adversely affect." "**Effect**" appears throughout section 7 regulations and documents in the phrases "adverse effects," "beneficial effects," "effects of the action," and "no effect."

Critical habitat -- Specific geographic areas, whether occupied by listed species or not, that are determined to be essential for the conservation and management of listed species, and that have been formally described in the Federal Register [ESA].

Direct effect – Immediate effects [Director letter on Guidance for Conducting Endangered Species Act Section 7 Consultations on Federal Assistance Grants to States 9/2/2004]

Discountable - Discountable effects are those extremely unlikely to occur. [Endangered Species Consultation Handbook]

“Federal Action”: Any effort or activity that is conducted by, permitted by, or funded by a federal agency unless otherwise determined by federal legislation.

Indirect effects - those effects that are caused by or will result from the proposed action and are later in time, but are still reasonably certain to occur. [50 CFR §402.02]

Insignificant - Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. [Endangered Species Consultation Handbook]

Interdependent actions - actions having no independent utility apart from the proposed action. [50 CFR §402.02]

Interrelated actions - actions that are part of a larger action and depend on the larger action for their justification. [50 CFR §402.02]

Take - to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct. [ESA §3(19)] **Harm** is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering.

Harass is defined by the Service as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering. [50 CFR §17.3]

Listed, Proposed and Candidate Species – Refer to the Region 3 website for information on which species are listed as federally endangered or threatened, which are proposed for listing and which are candidates for listing.

WSFR (aka Federal Aid, Federal Assistance) – Wildlife and Sport Fish Restoration Program – The division of the U.S. Fish and Wildlife Service which administers grant programs such as the P-R Wildlife Restoration Program, D-J Sport Fish Restoration Program, State Wildlife Grants program, section 6 Cooperative Endangered Species Program.

