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Environment Other Laws and Requirements **Endangered Species Act**

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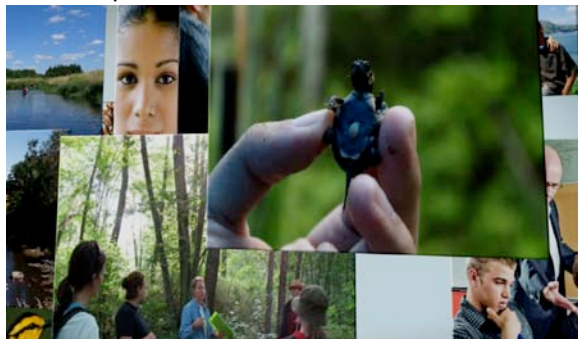
This law covers the conservation of threatened and endangered plants and animals and their critical habitats

There are a number of areas of environmental law that local public agencies may encounter on a Federal-aid project. These areas address a project's effects on:

- The natural environment—meaning the air, water, and habitats for endangered species
- The social environment—particularly related to minority and low-income populations
- Historic sites
- Parks and recreation areas

The National Environmental Policy Act, known as NEPA, provides a framework for environmental analyses, reviews, and consultations. NEPA's process "umbrella" covers a project's compliance with all pertinent Federal environmental laws.

Agencies may recognize a need to comply with an environmental law under the NEPA umbrella, but it's the environmental law itself that is the source of the requirement.



One such law, the Endangered Species Act, provides a program for the conservation of threatened and endangered plants and animals and the critical habitats upon which they depend. The list of threatened and endangered species includes birds, insects, fish, reptiles, mammals, crustaceans, flowers, grasses, and trees.



The law requires the Federal Highway Administration (FHWA) to use its authorities to help conserve listed species and ensure that transportation projects are not likely to jeopardize the continued existence of any listed species or result in the destruction or modification of critical habitat. Additionally, the project's actions cannot take listed species without prior approval. The term "take" includes harassing, harming, trapping or killing.

The Endangered Species Act is enforced by the U.S. Fish and Wildlife Service and the Commerce Department's National Marine Fisheries Service. If a protected species or critical habitat exists in your project area, you must consult with these agencies about the project's environmental effects. Once it is determined through the Endangered Species Act Section 7 consultation process that your project will not jeopardize a protected species, it can proceed. However, the agencies may require mitigation measures and place conditions and restrictions on your project.



Now let's look at the consultation process and resources that will help construct a road through an environmentally sensitive area.

A simplified overview of the Endangered Species Act Section 7 consultation process is as follows: First, identify the action or the project. Develop a project description that addresses what will be done, when, where, and how—including any conservation measures that will be implemented. Identify through the agencies the listed species or designated critical habitat that may be affected by the project. The project sponsor asks the U.S. Fish and Wildlife Service or National Marine Fisheries Service whether a protected species may be present in the project, or action area. In your letter, specify the nature and scope of the project and its location. The agencies will respond with a list of endangered species in that area. A survey for listed species in the action area may be warranted.

Next, analyze the effects of the action on the listed resources both directly and indirectly using the best available science. This analysis is generally called a biological assessment. The assessment will require expertise regarding the affected species and their habitat.

Consult with the agencies. The U.S. Fish and Wildlife Service or National Marine Fisheries Service will review the biological assessment to determine if the action will likely jeopardize the continued existence of the species or destroy critical habitat. The agencies will also describe the type and amount of take on the project along with measures needed to reduce the extent of take.



Keep in mind, that if the potential effects on the listed resources change from what was consulted on, then reinitiating or re-entering the Section 7 consultation process may be required.

To illustrate the process, let's consider a project that proposes to widen a highway through a wooded area.

The project team sends a letter to the U.S. Fish and Wildlife Service asking for the area's species list. The letter describes the need to widen the road and stabilize the side slopes by clearing off vegetation and cutting into the embankment. The correspondence includes a map of their project.

The U.S. Fish and Wildlife Service informs them that their project is in an area that has a threatened species of bog turtles and recommends the team conduct a survey of the area.

The project team hires a respected and experienced consultant. Under her direction, the bog turtle survey begins.

The consultant also collaborates with the project team and U.S. Fish and Wildlife Service to develop the biological assessment. They identify the specific side slopes that will be disturbed and estimate the time they will need to complete the work before it can be re-vegetated. They also analyze the preferred method to control storm water discharge.



From the assessment of the bog turtle's needs and the project's potential adverse effects, the team outlines a plan that includes:

- Installing a fence around the project area and removing the turtles from the area,
- Implementing a storm water management plan that will not degrade the habitat, and
- Installing turtle crossings.

The U.S. Fish and Wildlife Service reviews the biological assessment, conducts its own analysis, and publishes a biological opinion that determines the project is not likely to jeopardize the continuing existence of the bog turtle, but finds that some bog turtles will be taken as a result of the project. As a result, some limits are placed on the amount of acreage and the number of turtles the project can disturb.

It is your agency's responsibility to comply with the Endangered Species Act; failure to do so may result in civil or criminal penalties.

There are a number of resources and practices available to help your agency construct roads in areas of critical habitat, including:

- Maps of designated critical habitats in your area
- An inventory of proven methods for minimizing and mitigating impacts to critical habitat
- Your agency's storm water management manual that provides guidance, options, and tools available to protect critical habitat
- Internal controls for inspecting the project and ensuring your agency's follow through on all environmental commitments



Your State department of transportation can also provide guidance in developing approaches that comply with the Endangered Species Act.

Web Resources

- Link to FHWA's Endangered Species Act Webtool
<http://www.environment.fhwa.dot.gov/esawebtool/>
- Information on U.S. Fish and Wildlife Service Endangered Species Program
<http://www.fws.gov/angered/>
- Information on NOAA Fisheries Endangered Species Act
<http://www.nmfs.noaa.gov/pr/laws/esa/>

The content of this document is not a substitute for information obtained from State departments of transportation, appropriate FHWA Division Offices, and applicable laws. Scenarios have been simplified for emphasis and do not necessarily reflect the actual range of requirements applicable to the scenario or this topic. This document was created under contract number DTFH61-11-D-00025 by the Federal Highway Administration, U.S. Department of Transportation, and is offered to the public to heighten and focus awareness of Federal-aid requirements within the local public agencies community and reinforces the importance of these necessary policies, procedures, and practices.

This companion resource is the script content for the video production of the same name.