

22F - FISH AND WILDLIFE STUDIES

Fish and Wildlife Service Coordination

The U.S. Fish and Wildlife Service (Service) is the principal Federal agency responsible for conserving, protecting and enhancing fish, wildlife and plants and their habitats for the continuing benefit of the American people. The agency enforces Federal wildlife laws, administers the Endangered Species Act, manages migratory bird populations, restores nationally significant fisheries, and conserves and restores wildlife habitat such as wetlands. Natural resource protection legislation relevant to the authorized projects that affect the Service's trust resource responsibilities include the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 *et seq.*), the Fish and Wildlife Coordination Act, as amended (FWCA) (16 U.S.C. 661 *et seq.*), the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), the Migratory Bird Treaty Act (16 U.S.C. 703-712), the Estuary Protection Act (16 U.S.C. 1221-1226), and the Coastal Zone Management Act of 1972 (16 U.S.C. 1451-1464). In addition, several Executive Orders have also established guidance to Federal agencies, including the Service, relative to fish and wildlife protection and conservation. For projects authorized under the Water Resources Development Act, the Endangered Species Act and the Fish and Wildlife Coordination Act represent the primary authorities under which the Service cooperates and coordinates with project sponsors.

Federal Activities and Responsibilities under the Endangered Species Act

A. Informal Consultation Process

The Army Corps of Engineers (USACE) will informally consult or confer with the Service(s) (the Fish and Wildlife Service and the National Marine Fisheries Service) regarding federally listed and candidate species. The St. Johns River Water Management District, as the applicant, may also be involved in the consultation process. Informal consultation determines the likelihood of adverse effects on a listed species or critical habitat. Informal consultations: (1) clarify whether and what listed, proposed, and candidate species or designated or proposed critical habitats may occur in the action area; (2) determine what effect the action may have on these species or critical habitats; (3) explore ways to modify the action to reduce or remove adverse effects to the species or critical habitats; (4) determine the need to enter into formal consultation for listed species or designated critical habitats, or conference for proposed species or proposed critical habitats; and (5) explore the design or modification of an action to benefit the species.

If informal consultation occurs early in the planning process (*i.e.*, prior to the development of project alternatives), it may avoid the need for formal consultation and greatly increase the potential for project success.

B. Biological Assessments

The USACE is required under the ESA to provide the best scientific and commercial data available concerning the effects of the proposed project on listed species or designated critical habitat. This requires the preparation of a Biological Assessment (BA) by USACE, which must be submitted within 180 calendar days of receipt of a species list from the Service(s). The BA will describe the project, project area (with relevant maps), proposed management activities, and include supporting documents, particularly those that provide an assessment of the proposed site. It will indicate the listed species that may occur in the project area, including past surveys for such species. The BA will also evaluate how the project may affect listed species or critical habitat that occurs in the project area. This will include direct, indirect, and cumulative effects. The BA will describe measures to avoid, reduce, or eliminate adverse effects or enhance beneficial effects to the species, and will state the USACE's decision.

The ESA requires the Corps to determine whether proposed projects "may affect" listed species or result in the destruction or adverse modification of critical habitat. If the Corps determines a proposed project "may affect" a listed species, we must formally or informally consult with the appropriate Service, unless we determine that the proposed project "may affect but is not likely to adversely affect," and the Service concurs with that determination. Once consultation has begun, the Service must determine whether the proposed action would jeopardize the species' continued existence. If so, the Service will advise the Corps. If not, they must determine if the proposed activity will result in a "take" under the ESA. A conference with the appropriate Service is required for species proposed to be listed.

C. Formal Consultation Process

Formal consultation will be necessary if: (1) the USACE requests consultation after determining the proposed action may affect listed species or critical habitat, or (2) the Service(s), through informal consultation, do not concur with the action agency's finding that the proposed action is not likely to adversely affect the listed species or critical habitat.

Through the formal consultation process, the Service(s) responsibilities include: (1) review of all relevant information provided by the USACE or otherwise available, (2) evaluation of the current status of the listed species or critical habitat, and (3) evaluation of the effects of the action and cumulative effects on the listed species or critical habitat. The Service(s) then formulates a biological opinion as to whether the action, taken together with cumulative effects is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. The Service(s) determines the amount or extent of anticipated incidental take in an incidental

take statement included in the biological opinion. Formal consultation is concluded within 90 days after its initiation unless extended in accordance with the provisions of 50 CFR § 402.14. Within 45 days after concluding formal consultation, the Service(s) delivers its biological opinion. For more detailed information on the consultation process required by the ESA, see the Endangered Species Consultation Handbook (U.S. Fish and Wildlife Service and National Marine Fisheries Service 1998), which is posted on the world wide web at <http://endangered.fws.gov/consultations/s7hndbk/s7hndbk.htm>.

Federal Activities and Responsibilities under the Fish and Wildlife Coordination Act (FWCA)

The central objective of the FWCA is to allow for equal consideration of wildlife conservation with other features of water resource development programs. Under provisions of the FWCA, the Service has the authority to investigate and report on all proposals for work and/or other related activities in or affecting the waters of the United States that are sanctioned, permitted, assisted, or conducted by the Federal government. Section 2(b) of the FWCA allows the Service to make recommendations to the USACE that establish measures to prevent loss of or damage to wildlife resources, as well as to provide concurrently for the development and improvement of such resources.

The USACE and the Service have established coordination procedures and policy for funding of Service involvement. The USACE provides transfer funds to support the activities of the Service as set forth in a Scope of Work (SOW). The SOW includes provisions for the Service's attendance at meetings scheduled in conjunction with the USACE's planning, implementation, and evaluation process. The SOW also defines the USACE's responsibilities which include providing all available engineering, hydrologic, survey, real estate, ecological, and land use data for the project area necessary for the Service to evaluate project alternatives.

As determined in the SOW, the Service may provide Planning Aid Letters (PALs) or Planning Aid Reports (PARs) to the USACE. The purpose of PALs and PARs is to identify problems and opportunities related to the conservation and enhancement of fish and wildlife resources. The Service may review conceptual alternatives, provide recommendations for development of new conceptual alternatives, and prescribe the course for future coordination. Key objectives for these reporting documents are to identify opportunities for recovery of listed species and to ensure that a process for promoting conservation and restoration of "unique or scarce" habitats is introduced early in the planning process and carried through detailed design, construction, and post-construction monitoring.

The purpose of the 2(b) Report (FWCA report) is to provide the views and recommendations of the Secretary of the Interior in his/her report to Congress prior to Congressional authorization and funding. The report should document the results and

findings of the Service's studies, planning, and coordination. It should recommend those actions considered necessary by the Service to accomplish the fish and wildlife conservation goal of the FWCA. The 2(b) Report addresses those alternatives evaluated in the Feasibility Report, but focuses on the selected plan. A draft 2(b) Report is generally provided to the USACE early enough such as to influence and be attached to the Feasibility Report submitted to Division. The draft 2(b) Report and its findings and recommendations are then available for public release during the public comment period. To the extent that the selected plan is modified as a result of the public review process, the draft 2(b) Report is revised and finalized early enough to be made an integral part of the final EIS and Feasibility Report.

The Service will also make recommendations during the planning process regarding mitigation of impairments to fish and wildlife habitats. Avoidance and minimization of any adverse effects is the initial focus of the Service's early planning assistance. The Programmatic EIS for the Comprehensive Plan (USACE 1999) stated that the construction features will be designed to first avoid and then minimize impacts to wetlands or other aquatic sites and natural upland habitats. The USACE concluded that separable mitigation features were not included in the Comprehensive Plan, but a commitment was made to provide separable compensatory mitigation under two conditions: (1) unavoidable impacts on "unique or scarce" habitats, or (2) impacts on existing wetland compensatory mitigation sites that were established by authorized regulatory permits.

Literature Cited

U.S. Fish and Wildlife Service and National Marine Fisheries Service. 1998. Endangered Species Consultation Handbook. Procedures for conducting consultation and conference activities under Section 7 of the Endangered Species Act. U.S. Government Printing Office; Washington D.C.