

U.S. Fish and Wildlife Service

Kentucky Field Office

Section 7(a)(2) Technical Assistance

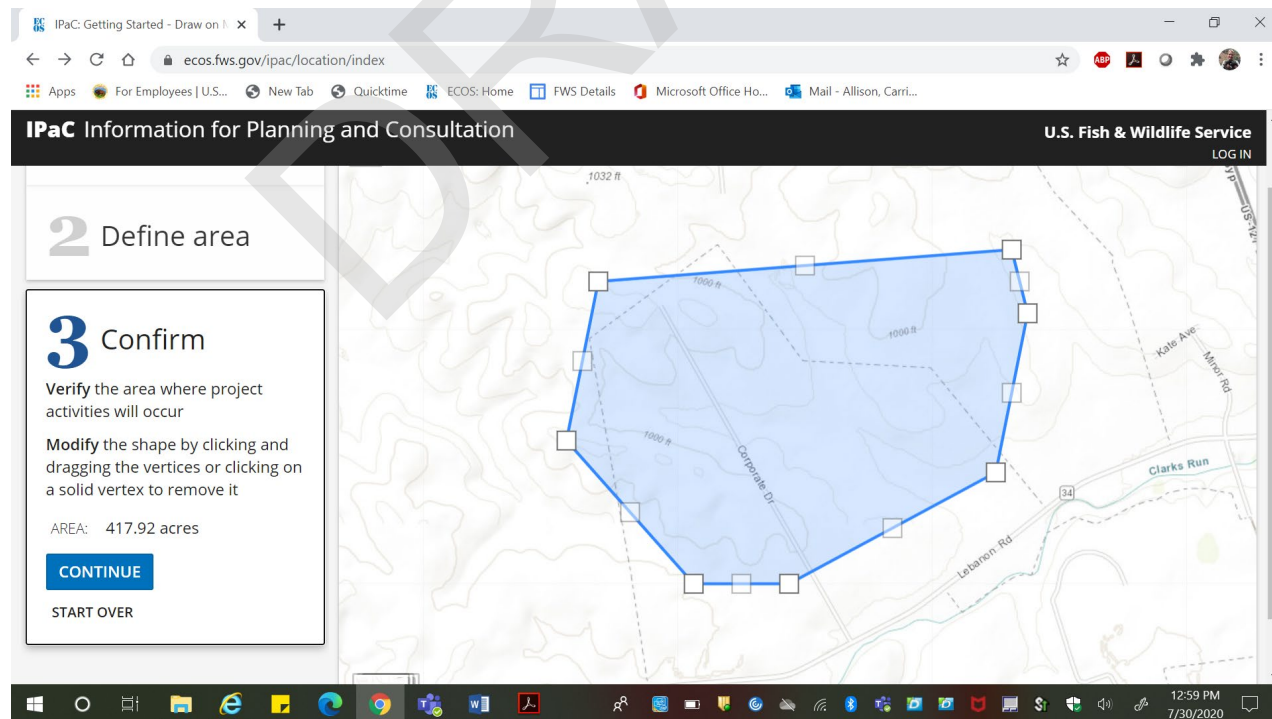
This following information provides step-by-step section 7 consultation guidelines for federal agencies, their applicants, and designated non-federal representatives. We are providing this information to assist federal agencies in fulfilling their section 7 obligations while streamlining their interactions with U.S. Fish and Wildlife Service's Kentucky Field Office (KFO). For more information regarding Section 7(a)(2) Responsibilities please refer to [50 CFR Part 402](#).

Step-by-Step Instructions

Words in **bold** are defined at the end of this document.

Step 1. Define the **action area** for your proposed project. The action area should include all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action and should be based on **effects of the action**.

Step 2. Enter the action area location into the Service's [Information for Planning and Consultation website](#) (IPaC). This will provide a preliminary list of resources that are known to occur, or have the potential to occur, within the action area. This is not an official species list. To obtain an official species list, proceed to Step 3 (required for consultation).



Step 3. Define the project in IPaC to receive an official species list and other information relevant to the project (Note-you will need to create an account to login). The species list will include species that are known to occur, or have the potential to occur, within the action area, whether or not **designated critical habitat (DCH)** occurs within the action area, and other relevant resource information. *A species and its habitat can still be present within the Action Area even if there is no DCH.*

The screenshot displays the IPaC (Information for Planning and Consultation) web application. The browser address bar shows the URL: ecos.fws.gov/ipac/project/M7KAN6532RFR5KPMXQU4NF30SQ/index. The page header includes "IPaC Information for Planning and Consultation" and "U.S. Fish & Wildlife Service" with the user name "CARRIE ALLISON". The navigation menu shows "PROJECT HOME" and "REGULATORY REVIEW". The main content area is titled "Example Project" and features a map of Boyle County, Kentucky, with a blue polygon highlighting the project area. Below the map, it states "LOCATION Boyle County, Kentucky" and "CREATED July 30, 2020". On the right side, a sidebar titled "What's next?" contains two sections: "ENDANGERED SPECIES REVIEW" with a "START REVIEW" button, and "SPECIES LIST" with the text "Requesting an official species list is now part of IPaC's endangered species review." and a "REQUEST SPECIES LIST" button circled in red.

Species that appear on a species list are not necessarily likely to occur in the Action Area. Use the best available data to determine whether a species is likely to occur in the Action Area for the purpose of section 7(a)(2) compliance. Lack of occurrence data may not be a sufficient rationale for determining if a species is *unlikely* to occur in the action area. Likewise, assuming the species is present, with no supporting rationale, is not sufficient to determine if a species is *likely* to occur in the action area.

If there are *no* species or DCH on the list or a species is not likely to occur within the project area conclude "**no effect**" and document your finding. This documentation would typically demonstrate a lack of suitable habitat within the action area, show that no impacts to suitable habitat would occur, or provide information that the species is not likely to occur in the action area even though suitable habitat is present. No consultation under ESA section 7(a)(2) is required if the action would result in "no effect" to listed species or DCH.

To evaluate species/DCH on the list that are likely to occur within the action area, proceed to Step 4.

Step 4. Evaluate Determination Keys. Determination Keys are species-specific keys that may be available for some of the species that occur on your species list. The Determination Key will either result in completion of consultation for that species or recommend further coordination with the KFO. Species that do not have Determination Keys should be evaluated manually as described in Step 5.

The screenshot shows a web browser window with the URL ecos.fws.gov/ipac/project/M7KAN6S32RFR5KPMXQU4NF3O5Q/speciesList. The page title is "IPaC: ESA Species list". The browser's address bar shows the URL. The page content includes a progress bar with three steps: 1. Request an official species list (completed), 2. Evaluate determination keys (current step), and 3. Make effect determinations. The main heading is "Step 1: Request an official species list". Below the heading, there is a paragraph explaining that an official species list is a letter from the local U.S. Fish and Wildlife Service office. A green checkmark icon indicates that the "Species list request complete". Below this, it states that the species list was generated "less than a minute ago" and is valid for 90 days. It also mentions that an official species list has been generated for the "Kentucky Ecological Services Field Office" and provides a link to the "Species List: Kentucky Ecological Services Field Office". A red circle highlights a blue button labeled "NEXT STEP: EVALUATE DETERMINATION KEYS".

Step 5. Make effects determinations for the species on the list that are likely to occur within the action area and for which you have not obtained concurrence through a Determination Key. Information available on USFWS Species Profile pages may assist in evaluating potential effects and provide recommended avoidance and minimization measures. To access Species Profiles, click [here](#) and enter the species name in the “Search for a Listed species by name” search box. To make species effects determinations:

- A.** Describe the action and the effects of the action. **Deconstruct the action** into component parts to be sure that you do not miss any part of the action that could cause effects to the species.
- B.** Identify **stressors** caused by the action.
- C.** Determine if the stressor is relevant to the species. If there are no stressors relevant to the species, a “no effect” conclusion is appropriate (refer to step 3). If stressors are relevant to the species, proceed to Step 5D.
- D.** Determine if the species is likely to be **exposed** to stressors caused by the proposed action. If the species is unlikely to be exposed to stressors caused by

the proposed action, effects are considered discountable and a “**may affect, not likely to adversely affect determination**” is appropriate. If a species will be exposed to stressors, proceed to Step 5E.

Note: Stressors that affect species’ resources may have consequences even if the species is not present when the project is implemented. For example, removal of Indiana bat maternity roost trees during the winter would affect females when they return from hibernacula in the spring.

E. For each species, determine whether or not an **adverse response** is likely to occur as result of exposure to the stressor (refer to the **2-part causation test**). If an adverse response is not likely to occur, effects are considered **insignificant** and a “may affect, not likely to adversely affect” determination is appropriate. If an adverse response is likely to occur, proceed to Step 5F.

F. If an adverse response is likely to occur, a “**may affect, likely to adversely affect**” determination is appropriate and initiation of **formal consultation** is recommended (refer to Step 7).

G. If any DCH overlaps with the action area, proceed to Step 6. If no DCH overlaps with the action area, proceed to Step 7.

Step 6. Make effects determinations for DCH.

A. Identify stressors to the **essential physical and biological features** (PBF) of any DCH that overlaps with the action area.

B. Determine if any of the DCH PBFs are likely to be exposed to stressors caused by the proposed action. If the DCH PBFs are unlikely to be exposed to stressors caused by the proposed action, effects are considered discountable and a “may affect, not likely to adversely affect determination” is appropriate. If a DCH PBF will be exposed to stressors, proceed to Step 6C.

C. Determine whether or not an adverse response is likely certain to occur for each DCH PBF as result of exposure to the stressor. If an adverse response is not likely to occur, effects to DCH are considered insignificant and a “may affect, not likely to adversely affect” determination is appropriate. If an adverse response is likely to occur, proceed to Step 6D.

D. If an adverse response is likely to occur, a “may affect, likely to adversely affect” determination for DCH is appropriate and initiation of formal consultation is recommended (refer to Step 7).

Step 7. Document your findings and submit project information to the KFO for concurrence. **Submittals should be submitted via email to: KentuckyES@fws.gov**

Your submittal should include:

- location of the proposed action (County, GPS coordinates);
- description of the proposed action;
- map of the action area;
- description of the habitat onsite;
- the consultation code from the official species list letter generated from IPaC (please do not send a copy of the species list with your submittal);
- the consultation code from any verification letter you generated from IPaC;
- list of the species, not covered under an IPaC Determination Key, that are likely to occur within the action area;
- species effects analysis that identifies stressors, exposure, and response for each species;
- a description of any species-specific avoidance and minimization measures that will be incorporated into the project;
- appropriate species determinations and justification for the determination.

Agencies /Project proponents should base their determinations on the best scientific and commercial data available. **We cannot concur with submittals that are missing information or that do not provide adequate justification for species determinations.** To provide adequate information on which to base a determination, it may be appropriate to conduct surveys to determine whether listed species are present in the action area. Please contact the KFO for more information.

The KFO will provide a concurrence or request for additional information within approximately 30 days. Complex projects may take longer to review. Once the KFO concurs with a “may affect, not likely to adversely” effect determination for all species and DCH, **informal consultation** is concluded. If a “may affect, likely to adversely affect determination” has been made for any species or DCH and the KFO concurs with this determination, formal consultation should be initiated by the federal action agency.

A template for a “may affect, not likely to adversely affect” submittal is included for reference.

If you have any questions, please contact 502-695-0468.

Date

Sender's Information

Dear [KFO contact]:

We are requesting concurrence from the U.S. Fish and Wildlife Service that the proposed [project title] is *not likely to adversely affect* [species name(s)/critical habitat]. The proposed project is located in [county, State, lat/long]. [Identify Federal agency nexus].

The proposed project involves [describe the what, where, and when of the action. If the project will involve multi-phases or tasks, explain each of them separately. Include any conservation measures that will be implemented to avoid or minimize impacts to listed species or critical habitat.]

We reviewed your agency's IPaC website for a list of species and critical habitat that have the potential to occur within the action area on [date]. There are [number] species that may be present: [list species].

[For each species, explain basis for the "may affect, not likely to adversely affect" determination. It should include why you anticipate only wholly beneficial, insignificant, or discountable effects to occur. Insignificant conclusions should describe the anticipated responses and why they are not likely to be detectable or measurable. Discountable conclusions should explain why exposure to the proposed project or the anticipated responses will be extremely unlikely to occur.]

For these reasons, we conclude that the [project] is not likely to adversely affect [species]. We request your concurrence with our determination(s). Please contact [project lead name] at [phone number and email] if you have any questions.

Definitions

Action Area: All areas to be affected directly or indirectly by the action and not merely the immediate area involved in the action.

Effects of the action: All consequences to listed species or designated critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action.

Designated 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.

No effect: There will be no impacts, positive or negative, to listed species or designated critical habitat; no listed resources will be exposed to the action and its environmental consequences.

Deconstruct the action: Describing the action into components that facilitate identifying specific changes to land/water/air that the action would cause (who, why, what, where, when, and how).

Stressors: Any physical, chemical, or biological alteration of resources that can induce an adverse response on an individual or designated critical habitat, or indirectly as impacts to resources.

Exposed: Exposure occurs when a species or an essential physical or biological feature of designated critical habitat is subject to a consequence of a federal action.

Adverse response: A negative physical, behavioral, or physiological reaction of an individual or a change in an essential physical or biological feature of designated critical habitat upon exposure.

2-part causation test: 1. "But for" means that the activity causing a consequence would not occur if the proposed action does not go forward. 2. "Reasonably certain to occur" means the predicted consequence of an activity that would not occur but for the proposed action is based on clear and substantial information, using the best scientific and commercial data available.

May affect, not likely to adversely affect: The appropriate determination a when effects to listed species or designated critical habitat are expected to be discountable, insignificant, or completely beneficial.

May affect, likely to adversely affect: The appropriate determination when effects to a listed species or designated critical habitat are expected to result in an adverse response.

Formal consultation: A mandatory process for proposed projects that may adversely affect listed species; the process is initiated in writing by the action agency, and concludes with the issuance of a biological opinion by the Service.

Essential physical and biological features: The physical and biological features of designated or proposed critical habitat essential to the conservation of the species (previously referred to as primary constituent elements).

Informal consultation: Includes any form of communication between the Federal action agency, applicant, or designated non Federal representative and the Service to determine if listed species may occur in the action area and what the effects of the action may be to such species. This phase is often used to develop project modifications or alternatives to avoid adverse effects to listed species, which would then preclude the need for formal consultation.