

Threatened and Endangered Species

Under the Endangered Species Act of 1973 (ESA), the North Dakota Department of Transportation (NDDOT) is required to consult with the US Fish and Wildlife Service (USFWS) to insure that its projects are not likely to jeopardize the continued existence of any endangered and threatened species (listed species). ESA procedures for consultation are detailed in Interagency Cooperation—Endangered Species Act of 1973, as Amended, Subpart B—Consultation Procedures (50 CFR Part 402).

For the NDDOT, consultation begins with a query to the USFWS on the distribution and habitat requirements of listed species for a given NDDOT project area and vicinity. The USFWS maintains state lists of endangered and threatened species and their habitat requirements sorted by county. In addition to database queries, the NDDOT utilizes in-house expertise together with other sources of geographic information to screen project areas for the presence of habitats that may contain or be suitable for a listed species. For the vast majority of NDDOT projects, database records or in-house screenings show that there are no listed species or habitats suitable for listed species within a project area or its vicinity, a determination that there will be no adverse impacts is made and consultation is terminated.

For a small number of projects, a record of occurrence of a listed species is known from within a project area and vicinity or NDDOT staff determine that there may be habitat suitable for a listed species. When this happens, the NDDOT will initiate field studies either to relocate the record of occurrence or to search for listed species within suitable habitats. Often study results show absence of listed species or absence of suitable habitat. In the event a listed species is present within a project area, the NDDOT usually is able to avoid impacts—by shifting the alignment of a proposed highway, for example. Consultation may be terminated when the NDDOT can demonstrate that there will be no adverse impacts to listed species.

When a listed species is located within a project area and complete avoidance of an impact is not practicable and there could be or will be impacts to a listed species, the NDDOT may prepare a Biological Assessment (BA) or Detailed Action Report (DAR) in accordance with the ESA, respectively. The BA or DAR includes a detailed map of the location of the project, the results of field studies of the project area and a discussion of measures to avoid, minimize and compensate for impacts to the listed species. If the USFWS concurs with the BA or the DAR—that there are no listed species that are likely to be adversely affected by the project—then consultation is terminated.

The response to a BA or DAR may take the form of a Biological Opinion that includes a statement as to whether the project is likely to jeopardize the continued existence of a listed species (jeopardy opinion); or, the project is not likely to jeopardize the continued existence of a listed species (no jeopardy opinion). In a no jeopardy opinion, the USFWS will include an authorization for the take of a listed species incidental to the construction of a project. For authorization of incidental take of North Dakota listed animals, a Conservation Plan (CP) shall be prepared by the NDDOT. The CP must include a description of the project and measures to minimize and mitigate project impacts. The approval process includes a period for review of the CP by the public.

BAs and CPs are to include a description of all measures to be implemented to minimize or mitigate the effects of a project on a listed species and, plans to monitor the effectiveness of those measures. BOs may contain non-binding discretionary conservation recommendations. These measures or recommendations often become what are known to the NDDOT as project commitments. A commitment might be a restriction on the dates of construction of a project. For example, construction of a highway bridge may be scheduled so that there is no in-stream work during the spawning and incubation periods of a listed species of fish.

For some projects, commitments are made to compensate for the take of a listed species or its habitat and this may be accomplished by preserving, enhancing or restoring habitats that contain listed species or their preferred habitat. Compensation can be done on land acquired by the NDDOT, on private land through purchase of conservation easements or on public lands in partnership with a land management agency. Other examples of commitments or mitigation measures can be the use of action items that are included in USFWS recovery plans for listed species. Monitoring of project commitments is accomplished by the NDDOT. Below are links to the USFWS and the ND Game and Fish Departments websites.

North Dakota Game and Fish Department –

- [FAQ's on Threatened and Endangered Species](#)

United States Fish and Wildlife Service –

- [Endangered Species](#)
- North Dakota Field Office –
 - [Endangered Species](#)
 - [Endangered Species Act](#)