

PART 2, CHAPTER 27

PROTECTED SPECIES AND HABITAT

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PART 2, CHAPTER 27

PROTECTED SPECIES AND HABITAT

27.1 OVERVIEW

27.1.1 Purpose and Use

This chapter provides procedures for determining protected species and habitat impacts for transportation projects. The chapter also provides guidance on coordinating with natural resource agencies to ensure compliance with the *Endangered Species Act (ESA) of 1973*, as amended, and the *Florida Endangered and Threatened Species Act, Section 379.2291, Florida Statutes*. The term protected species is used throughout this chapter as a general term for species that are protected by law, regulation, or rule. When the term listed species is used, it refers to species that are identified as threatened or endangered at the federal or state level. This chapter also provides guidance on documenting protected species and habitat impacts, coordination with natural resource agencies, and related commitments in the Environmental Document [Categorical Exclusion (CE), Environmental Assessment (EA) or Environmental Impact Statement (EIS), State Environmental Impact Report (SEIR)] and accompanying technical memo or *Natural Resources Evaluation (NRE)*. Guidance on consultation with natural resource agencies, documentation, and procedures during Design (permitting) and Construction phases, as well as emergency consultation with resource agencies is also provided.

27.1.2 Definitions

The definitions below are summarized descriptions from federal and state regulations of key terms used throughout the chapter relating to protected species and habitat terminology.

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*).

Adverse modification (or destruction) of critical habitat - Activities that may destroy or adversely modify critical habitat by altering the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for the target (listed) species.

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 Florida scrub jay”). “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,” “discountable effects”, “effects of the action,” and “no effect” (Proper grammatical usage).

Biological Assessment (BA) - Information prepared by, or under the direction of, a federal agency to determine whether a proposed action is likely to: (1) adversely affect listed species or designated critical habitat; (2) jeopardize the continued existence of species that are proposed for listing; or (3) adversely modify proposed critical habitat. **BA**s must be prepared for "major construction activities." (See **50 CFR § 402.02**). The outcome of the **BA** determines whether formal consultation or a conference opinion is necessary (**50 CFR § 402.02, 50 CFR § 402.12**).

Biological Opinion (BO) - Document which includes: (1) the opinion of the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) as to whether or not a federal action is likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of designated critical habitat; (2) a summary of the information on which the opinion is based; and (3) a detailed discussion of the effects of the action on listed species or designated critical habitat [**50 CFR § 402.02, 50 CFR § 402.14(h)**].

Candidate species - Plant and animal taxa considered for possible addition to the List of Endangered and Threatened Species. These are taxa for which USFWS has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposal to list, but issuance of a proposed rule is currently precluded by higher priority listing actions [**61 FR 7596-7613 (February 28, 1996)**].

Compensatory Mitigation - Serves to compensate for an unavoidable impact to species or habitat by replacing or providing substitute resources having similar functions of equal or greater ecological value.

Conference - Process of early interagency cooperation involving informal or formal discussions between a federal agency and USFWS or NMFS pursuant to **Section 7(a)(4)** of the **Endangered Species Act (ESA)** regarding the likely impact of an action on proposed species or proposed critical habitat. Conferences are: (1) required for proposed federal actions likely to jeopardize the continued existence of a proposed species, or destroy or adversely modify proposed critical habitat; (2) designed to help federal agencies identify and resolve potential conflicts between an action and species conservation early in a project's planning; and (3) designed to develop recommendations to minimize or avoid adverse effects to proposed species or proposed critical habitat (**50 CFR § 402.02, 50 CFR § 402.10**).

Conservation measures - Actions to benefit or promote the recovery of listed species that are included by the federal agency as an integral part of the proposed action. These actions will be taken by the resource agency or applicant, and serve to minimize or compensate for project effects on the species under review. These may include actions taken prior to the initiation of consultation, or actions which the federal agency or applicant have committed to complete in a **BA** or similar document.

Conservation recommendations - The Service(s)' non-binding suggestions resulting from formal or informal consultation that: (1) identify discretionary measures a federal

agency can take to minimize or avoid the adverse effects of a proposed action on listed or proposed species, or designated or proposed critical habitat; (2) identify studies, monitoring, or research to develop new information on listed or proposed species, or designated or proposed critical habitat; and (3) include suggestions on how an action agency can assist species conservation as part of their action and in furtherance of their authorities under **Section 7(a)(1)** of the **ESA; 50 CFR § 402.02**.

Constituent elements - As prescribed by **50 CFR § 424.12(b)** are designated or proposed critical habitat essential to the conservation of the species takes into consideration both physical and biological features, including, but not limited to: (1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and (5) habitats that are protected from disturbance or are representative of the historic geographic and ecological distributions of a species .

Critical habitat - For listed species consists of: (1) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of **Section 4** of the **ESA**, on which are found those physical or biological features (constituent elements) (a) essential to the conservation of the species and (b) which may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of **Section 4** of the **ESA**, upon a determination by the Secretary that such areas are essential for the conservation of the species. (**16 U.S.C. § 1532-1533**) Designated critical habitats are described in **50 CFR § 17 and § 226**.

Environmental baseline - The past and present impacts of all federal, state, or private actions and other human activities in an action area, the anticipated impacts of all proposed federal projects in an action area that have already undergone formal or early **Section 7** consultation, and the impact of state or private actions that are contemporaneous with the consultation in process (**50 CFR § 402**). The environmental baseline does not include the effects of the action under review in the consultation (**USFWS and NMFS, 1998**).

Essential Fish Habitat (EFH) - Those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. For the purpose of interpreting the definition of essential fish habitat: "Waters" include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; "substrate" includes sediment, hard bottom, structures underlying the waters, and associated biological communities; "necessary" means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and "spawning, breeding, feeding, or growth to maturity" covers a species' full life cycle. EFH is described in **Fishery Management Plans**, and is approved by the Secretary of Commerce acting through the National Oceanic and Atmospheric Administration Fisheries (**50 CFR § 600.10**).

Formal consultation - A process between USFWS or NMFS and a federal agency or applicant that: (1) determines whether a proposed federal action is likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat; (2) begins with a federal agency's written request and submittal of a complete initiation package; and (3) concludes with the issuance of a biological opinion and incidental take statement by either USFWS or NMFS. If a proposed federal action may affect a listed species or designated critical habitat, formal consultation is required (except when USFWS or NMFS concur, in writing, that a proposed action "may affect, is not likely to adversely affect" listed species or designated critical habitat) (**50 CFR § 402.02, 50 CFR § 402.14**).

Findings - A determination made by the lead agency on the level of impact a proposed action has on a resource. This determination is derived from all known information including coordination/consultation with the resource/regulatory agency.

Incidental take (federal) - Take of listed fish or wildlife species that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by a federal agency or applicant, or contractors working on behalf of the applicant (**50 CFR § 402.02**).

Incidental Take (State of Florida) - Any taking otherwise prohibited, if such taking is incidental to, and not the purpose of the carrying out of an otherwise lawful activity. (**Chapter 68A-27.001(5), F.A.C.**)

Incidental Take Statement (federal definition) - The part of a non-jeopardy **BO** that estimates the amount or extent of incidental take of listed species anticipated from the action subject to consultation as authorized under **50 CFR § 402.14(i)** and the resulting incidental take will not violate **ESA Section 9 (16 U.S.C. § 15.38)** take prohibitions.

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 (**USFWS and NMFS, 1998**).

Informal consultation - An optional process that includes all discussions and correspondence between the Service(s) and a federal agency or designated non-federal representative, prior to formal consultation, to determine whether a proposed federal action may affect listed species or critical habitat. This process allows the federal agency to utilize USFWSs or NMFSs expertise to evaluate the agency's assessment of potential effects or to suggest possible modifications to the proposed action which could avoid potentially adverse effects. If a proposed federal action may affect a listed species or designated critical habitat, formal consultation is required (except when USFWS or NMFS concur, in writing, that a proposed action "may affect, is not likely to adversely affect" listed species or designated critical habitat) (**50 CFR § 402.02, 50 CFR § 402.13**).

Jeopardize the continued existence of - To engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (**50 CFR § 402.02**).

Listed species (federal) - Any species of fish, wildlife or plant which has been determined to be endangered or threatened under **Section 4** of the **ESA**. Listed species are found in **50 CFR § 17.11-17.12 (50 CFR § 402.02)**.

Listed species (State of Florida) - Animal species listed as state-designated threatened or of special concern by the Florida Fish and Wildlife Conservation Commission (FWC) in **Chapter 68A-27, F.A.C.**; plant species listed by the state as Endangered, Threatened, or Commercially Exploited on the **Regulated Plant Index (5B-40.0055, F.A.C.)**.

Major Construction Activity - A construction project (or other undertaking having similar physical impacts) which is a major federal action significantly affecting the quality of the human environment as referred to in the **National Environmental Policy Act (NEPA), (42 U.S.C. § 4332(2)(C), 50 CFR § 402.02)**. Under **NEPA** major construction activities require Environmental Impact Statements.

May affect - The appropriate conclusion when a proposed action may pose **any** effects on listed species or designated critical habitat. When the federal agency proposing the action determines that a "may affect" situation exists, then they must either initiate formal consultation or seek written concurrence from USFWS or NMFS that the action "may affect, is not likely to adversely affect" listed species as defined below. A determination of "may affect" without a "not likely to adversely affect" or "likely to adversely affect" determination should not be submitted to the Service(s) as a finding (**USFWS and NMFS, 1998**).

May affect, not likely to adversely affect - The appropriate conclusion when effects on listed species are expected to be discountable, insignificant, or completely beneficial. "Beneficial effects" are contemporaneous positive effects without any adverse effects to the species. "Insignificant effects" relate to the size of the impact and should never reach the scale where a take occurs. "Discountable effects" are those extremely unlikely to occur. Based on best judgment, a person would not: (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur (**USFWS and NMFS, 1998**).

May affect, likely to adversely affect - The appropriate finding in a **BA** (or conclusion during informal consultation) if any adverse effect to listed species may occur as a direct or indirect result of the proposed action or its interrelated actions or interdependent actions, and the effect is not: discountable, insignificant, or beneficial (see definition of "may affect, not likely to adversely affect"). In the event the overall effect of the proposed action is beneficial to the listed species, but is also likely to cause some adverse effects, then the proposed action "is likely to adversely affect" the listed species. If an incidental take is anticipated to occur as a result of the proposed action, a "may affect, is likely to adversely affect" determination should be made. A "may affect, is likely to adversely affect" determination requires the initiation of formal **Section 7** consultation (**USFWS and NMFS, 1998**).

Natural Resources Evaluation (NRE) - A Florida Department of Transportation (FDOT) technical report that provides documentation of protected species and habitat, wetland,

and Essential Fish Habitat issues to supplement the Environmental Document. The Protected Species and Habitat section of the FDOT **NRE** may be sent to USFWS or NMFS to serve as a **BA** when necessary, but also includes information on state listed species and protected species and habitat. This section of the **NRE** may also be submitted to FWC separately.

No effect - The appropriate conclusion when the action agency determines its proposed action will not affect a listed species or designated critical habitat. Concurrence from USFWS or NMFS is not required (**USFWS and NMFS, 1998**).

Proposed critical habitat - Habitat proposed in the **Federal Register (FR)** to be designated as critical habitat, or habitat proposed to be added to an existing critical habitat designation, under **Section 4** of the **ESA** for any listed or proposed species (**50 CFR § 402.02**).

Proposed species - Any species of fish, wildlife or plant that is proposed in the **FR** to be listed under **Section 4** of the **ESA** (**50 CFR § 402.02**).

Protected species - In this chapter this term is used for species that are protected by federal or state regulations such as the **ESA, Migratory Bird Treaty Act of 1918, Marine Mammal Protection Act of 1972, Florida Statutes, Florida Administrative Code**, etc.

Reasonable and prudent alternatives - Recommended alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that USFWS or NMFS believe would avoid the likelihood of jeopardizing the continued existence of listed species or the destruction or adverse modification of designated critical habitat. These are applicable only when the Service determines an action is likely to result in jeopardy or adverse modification (**50 CFR § 402.02**).

Reasonable and prudent measures - Actions the Service(s)' Director believes necessary or appropriate to minimize the impacts, i.e., amount or extent, of incidental take (**50 CFR § 402.02**). These measures are considered nondiscretionary (mandatory) if a jeopardy or adverse modification opinion is to be avoided.

Service(s) - USFWS or NMFS (or both).

Take (federal) - To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct. **[16 U.S.C. § 1532(19)]** "Harm" is further defined by USFWS 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 USFWS 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**).

Take (State of Florida) - To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in such conduct. (**Chapter 68A-27, F.A.C.**) The term “harm” in the definition of take means an act which actually kills or injures fish or wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. The term “harass” in the definition of take means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering.

Technical memo - A brief memorandum documenting coordination between FDOT and the Service(s) or FWC concerning protected species and habitat issues.

27.1.3 Legislative Authority

Section 7(a)(2) of the **ESA (16 U.S.C. § 1536)** requires federal agencies to consult the United States Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS), as appropriate, to ensure that federally funded or authorized actions are not likely to jeopardize the continued existence of federally endangered or threatened species, or result in the destruction or adverse modification of designated critical habitat. The term “critical habitat” has a specific legal meaning and is a term defined and used in the **ESA (16 U.S.C. § 1532)**. It is specific geographic areas that contain features essential to the conservation of a threatened or endangered species and that may require special management and protection.” (**USFWS, 2013**). Generalized maps and detailed legal descriptions of critical habitat can be obtained through USFWS and/or **Federal Register (FR)** notices.

The Secretary of the U.S. Department of Interior (DOI), acting through USFWS, and the Secretary of the U.S. Department of Commerce, acting through NMFS, hereinafter referred to as the Services, are mandated to protect and conserve all forms of wildlife, plants, and marine life they find in serious jeopardy. In general, USFWS coordinates **ESA** activities for terrestrial and freshwater species and NMFS coordinates **ESA** activities for marine and anadromous species. Consultation responsibilities are shared for some species, for example, marine sea turtles and the anadromous Gulf sturgeon, which may be present in different habitats depending on the season or their life cycle stage. See **Section 27.2.2.1** for guidance on **ESA** consultation.

Amendments to the **ESA** in 1978, 1979 and 1982 changed the consultation requirements of **Section 7** and established the implementing regulations (**50 CFR Part 402**) to comply with the changes. These procedures allow federal agencies to consolidate **Section 7** requirements with interagency cooperation procedures that are required by other statutes, such as the **National Environmental Policy Act (NEPA; 42 USC 4321 et seq.)**. For Florida Federal Highway Administration (FHWA) projects, the **Section 7** requirements are met through the **NEPA** and environmental permitting processes. **NEPA** requires evidence-based analyses of project impacts, alternatives, and avoidance, while prescribing procedures for interagency cooperation, public involvement, and a thorough documentation of the project-related **NEPA** process.

Title 50 CFR § 402.08 allows federal agencies to delegate informal consultation and preparation of **Biological Assessments (BAs)** to a non-federal representative. See **Section 27.3.2.5** for information on **BAs**. FHWA has designated the Florida Department of Transportation (FDOT) as the non-federal action agency representative for **Section 7** informal consultation and has authorized FDOT to prepare **BAs** on FHWA projects in Florida (**FHWA, 2003a and 2003b**). However, **Section 7** formal consultation with the Services must be carried out by the FHWA Division Office or other Lead Federal Agency.

Section 404 of the **Clean Water Act of 1972 (CWA)** regulates the discharge of dredged or fill material into waters of the United States. The Environmental Protection Agency (EPA) provides oversight of the **Section 404** program and policies, while the U.S. Army Corps of Engineers (USACE) administers the day-to-day program and is responsible for federal wetland determinations and wetland permitting. Impacts to wetlands and other surface waters provide a “nexus” for involvement of the Services as cooperating federal agencies, where the Services advise the USACE or other Lead Federal Agency on the potential for wetland impacts to adversely affect federally listed species and their habitat needs. See **Section 27.3.3.4** for more information on permitting.

Like FHWA, USACE is required to prepare **NEPA** documents and will often participate as a cooperating agency on a transportation project. As a cooperating agency, USACE can adopt the FDOT **NEPA** document for projects for which they provide **Section 404** permits. Pursuant to **40 CFR § 1506.3** “a cooperating agency may adopt without recirculation of the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.” This provision is particularly important to permitting agencies, such as the USACE, who, as cooperating agencies, routinely adopt the U.S. Department of Transportation (USDOT) Environmental Documents.

Just as the federal agencies oversee the protection of certain species and resources, the Florida Constitution establishes the Florida Fish and Wildlife Conservation Commission (FWC), **Article IV, Section 9, Fla. Const.**, entrusted to “exercise the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life, and . . . marine life.” These powers and duties are further carried out through the legislative directives enacted in **Chapter 379, F.S.**, and embodied in the implementing regulations adopted in **Florida Administrative Code, Chapter 68**.

27.1.4 Protected Species and Habitat Evaluation Process Summary

Figure 27-1 provides a flow chart of the protected species and habitat evaluation process. Involvement with protected species and wildlife habitat should be evaluated regardless of whether the project is required to meet **NEPA** or state requirements. Similarly, this evaluation should take place regardless of whether the project qualifies for screening through the Efficient Transportation Decision Making (ETDM) process. See [Part 1, Chapter 2, Federal Highway Administration Class of Action Determination](#), for project types qualifying for ETDM screening. **Section 27.3.1.1** provides guidance for

documenting protected species and habitat evaluation for projects not qualifying for ETDM screening.

For projects that qualify for screening, species and habitat evaluation begins during the Programming Screen as explained in [Part 1, Chapter 3, Preliminary Environmental Discussion and Advance Notification](#). As part of adding information to the Preliminary Environmental Discussion (PED), the District requests an official species list from the Service(s) Environmental Technical Advisory Team (ETAT) members and a list from the Florida Fish and Wildlife Conservation Commission (FWC) ETAT members for state listed, or other protected species. If the Advance Notification (AN) is sent separately from the Programming Screen, the PED should request an update to the species list from the ETAT.

The District first reviews information from the **Programming Screen Summary Report**, then gathers information from various sources to aid in the determination of involvement with a federally listed threatened or endangered species, proposed threatened or endangered species, or designated or proposed critical habitat (**Section 27.3.1.2.1**). Information should also be collected on state listed species, habitat connectivity, areas that are ecologically important, and species that are otherwise protected by regulation. All information on protected species and habitats is compiled into a FDOT technical memo or **NRE**.

If federally listed species or critical habitat are present within the action area, then consultation with the Service(s) is necessary. Consultation may be as simple as a brief informal consultation or more in depth formal consultation (**Section 27.2.2.1**). In addition, if state listed species are present or expected to be present within the action area, then coordination with FWC is recommended.

A project requires an official federal document, called a **BA**, if federally listed species or critical habitat may be present in the action area that is subject to an EIS (**50 CFR § 402.12**). A FDOT **NRE** can be submitted to the Services for use as a **BA**. A **BA** is not typically required for CEs and EAs; however, if federally listed species or critical habitat involvement exists, information must be provided to the Services in the form of a technical memo to support the effects determination. See **Section 27.1.2** for definitions of the different effect determinations.

If the project is given a determination of “may affect, is likely to adversely affect” listed species or is designated critical habitat, FDOT will request FHWA initiate formal consultation under **Section 7** of the **ESA (Section 27.2.2.1)**. Formal consultation results in a **Biological Opinion (BO)** from the Services that determines whether a proposed action is likely to jeopardize the continued existence of a listed species (jeopardy), or destroy or adversely modify critical habitat (adverse modification).

The starting point for an effect determination is the environmental baseline (see **Section 27.1.2** for definition). The term “environmental baseline” is not synonymous with “existing conditions.” The environmental baseline “is an analysis of the effects of past and ongoing human and natural factors leading to the current status of the species, its habitat

(including designated critical habitat), and ecosystem, within the **action area**” (*USFWS and NMFS, 1998*). It therefore considers not only “existing conditions,” but past activities that have already affected listed species and critical habitat, and any other existing/proposed private, local, state, or federal actions that are contemporaneous with FDOT’s proposed action.

Information on state listed species and valuable natural habitats should also be collected for the project. In Florida, state listed species are regulated by the FWC for listed wildlife, and the Florida Department of Agriculture and Consumer Services (FDACS) for listed plants. FDOT must evaluate projects for compliance with the *Florida Endangered and Threatened Species Act of 1977 (Chapter 379, F.S., Chapter 68A-27, F.A.C., Chapter 5B-40, F.A.C.)*. Involvement with state listed species (endangered, threatened, or species of special concern) or natural areas such as Strategic Habitat Conservation Areas (SHCAs) or Florida Natural Areas Inventory (FNAI) rare natural communities should be addressed and issues worked out through coordination with appropriate state resource agencies. Impacts to these species and habitats should also be addressed in the Environmental Document. Fragmentation effects of the project to listed species habitat and/or wildlife corridors may need to be analyzed during project development.

For off-project activities associated with construction of the project (including, but not necessarily limited to borrow pits, concrete or asphalt plant sites, disposal sites, field offices, and material or equipment storage sites), the District follows the same procedures for identifying possible involvement with federally listed species or critical habitat for the project (*Section 27.3.3.6*). During construction, contractor activities are regulated by *Section 7* of the [Florida Department of Transportation Standard Specifications for Road and Bridge Construction](#). This ensures *ESA* requirements are met. If it is determined that there is no involvement, the District notifies the contractor in writing that the activity may proceed. If it is determined that there may be involvement, coordination with the Service(s) is required and a *NRE* may need to be prepared. The consultation procedure is the same as in the Project Development and Environment (PD&E) phase of the project (*Section 27.2.1*), except that no *NEPA* document is prepared. No off-project activities are exempt from the requirements of *Section 7* of the *ESA*. The results of the process are provided to the contractor for compliance. Off-project activities involving state listed species or other state protected species, is determined by using the same process as was used for the project to create a technical memo or *NRE*.

27.1.5 Key Points for Protected Species and Habitat Evaluation Process

1. Engage in early, continual, and strategic coordination with resource agencies (USFWS, NMFS, FWC, USACE).
2. Coordinate internally with FDOT PD&E, Design, and Construction staff (as applicable) throughout the process (e.g., ETDM screening, analysis, impact assessment, making commitments). Since PD&E Studies may result in commitments developed to address the specific protected species and habitat

issues of a project, it is critical that appropriate internal coordination efforts within the District are completed before such commitments are made.

3. For projects qualifying for ETDM screening, information from the screening should be used to prepare the scope of services for the PD&E Study and focus the protected species and habitat analysis/impact assessment.
4. Projects with protected species and habitat issues need to be evaluated and addressed regardless of Class of Action (COA).
5. Consultation will be needed with the applicable Service when federally listed species and/or critical habitat may exist within the action area. This may be informal consultation or may require the initiation of formal consultation by the Lead Federal Agency.
6. Request concurrence from the Services on “may affect, not likely to adversely affect” determinations and document in the Type 2 CE documentation, EA with Finding of No Significant Impact (FONSI), or Final Environmental Impact Statement (FEIS).
7. As required by the level of environmental documentation, ensure clear and concise transmittal of the commitments from the PD&E phase to the subsequent project Design and Construction phases using [Procedure No. 700-011-035, Project Commitment Tracking](#).
8. If an issue is identified during consultation that could affect completion of the consultation process, the District must inform the State Environmental Management Office (SEMO) and jointly coordinate with the Service and the Lead Federal Agency to determine the appropriate course of action.

27.2 REGULATORY AGENCY PROCESS

27.2.1 Coordination/Consultation/Engagement with Agencies

The effective management of protected species and habitat issues for transportation projects is reliant on the process of engaging the various state and federal regulatory agencies. When project managers routinely adhere to the three generalized coordination principles outlined below, there is a high probability of successful resolution of potential or actual protected species and habitat issues throughout the project’s development. The key elements of successful agency coordination can be summarized as follows: “**Early, continual, and strategic coordination.**”

Early coordination - Engagement with state and federal wildlife agencies should occur as early in the project as appropriate and practicable. For projects screened through the ETDM process, official agency engagement may occur during the Planning Screen, or more commonly during the Programming Screen (see **Section 27.3.1.2.1**). The overall goal of early engagement during the PD&E phase is to be **proactive** in identifying potentially protected species and habitat issues, and then **actively coordinating** with wildlife and other agencies to formulate strategies and responses that address those

issues. Early coordination with wildlife agencies provides an important opportunity for the agencies to review any data and analyses that have been developed, and to discuss the steps for advancing protected species/habitat coordination for the PD&E Study. It also aids in the development of alternatives and informs permitting and other future phases.

Continual coordination - Continual engagement with agencies involves communication as needed, in order to (among other things): determine the level of assessment and documentation required; confirm which species and/or habitats are likely to be affected by the project; decide whether **Section 7** informal consultation or formal consultation is required; and obtain wildlife agency confirmation for effect determinations, as appropriate. Continual coordination promotes an **ongoing dialogue** between FDOT and the regulatory agencies, minimizing the chances of miscommunication, misunderstandings, and “surprises” that could needlessly delay, complicate, or compromise a project.

Strategic coordination - Each project possesses unique circumstances and “facts on the ground.” Strategic coordination involves thoughtful consideration of an **overall strategy** for handling protected species and habitat issues throughout Planning, PD&E, Design, and Construction and Maintenance.

The advantages of developing a strategic approach include:

1. Early awareness of potential protected species/habitat issues;
2. Avoidance/minimization of potential impacts;
3. Aids in the development of alternatives;
4. A decrease in timeframes for wildlife agency approvals;
5. Initiating short or long term surveys, research, species studies, which may be required;
6. Complete documentation for the administrative record; and
7. Seamless transfer of information and commitments into the Design and Construction phases.

If PD&E Project Managers maintain an emphasis on the broad goals of “**early, continual, and strategic coordination**” for interacting with the wildlife agencies and other regulatory agencies, the act of following and implementing the step-by-step procedures (**Section 27.3**) becomes more consistent and effective.

27.2.2 Endangered Species Act Process

For federally funded, authorized, or implemented projects, **Section 7** of the **ESA** requires consultation with the Service(s) to ensure that actions are not likely to jeopardize the continued existence of federally endangered or threatened species, or result in the

destruction or adverse modification of critical habitat. All data collected on federally listed species and critical habitats should be included in a **NRE** or technical memo, and all meeting minutes of conversations, commitments, and consultation with the Services should be documented in the Environmental Document (**Section 27.3.2.6.2**).

It is highly recommended that the District obtain and reference the **Endangered Species Consultation Handbook (USFWS and NMFS, 1998)**, if involvement with a federally listed species is possible.

Regardless of whether the project is federally funded, the Districts **must** coordinate with the Service(s) if the project may impact federally listed species or critical habitat. For non-federal projects, such as SEIRs, it is highly recommended that the data collection process be the same as or similar to what is compiled for federal projects. This can be important in the event that federal funding is needed at a later time, or to avoid any unnecessary delays when subsequently requesting permits from federal agencies (such as the USACE).

If no federal nexus exists and listed species may be present, consultation with the Service(s) may determine that **Section 10** of the **ESA**, which authorizes incidental take permit(s) requiring submittal of Habitat Conservation Plan(s), may apply to the project. District staff should coordinate closely with SEMO if no apparent federal nexus exists to determine if **Section 10** consultation may be necessary, as these consultations are usually lengthy and more complex than **Section 7**. SEMO will coordinate with the Service(s) to determine the process.

27.2.2.1 Consultation With Federal Agencies

Interagency consultation with the Service(s) is an administrative review that operates in parallel with the science-based review process used for effects determinations. Overall, the information used for consultation should focus on conducting a thorough review of the effects of the alternative(s) for each listed species and/or critical habitat(s) potentially affected by the action.

Under federal law, each agency shall use the best scientific and commercial data available to complete an interagency consultation (**16 U.S.C. § 1536**). The consultation documentation should lead the reviewer (i.e., the Service) through a discussion of effects to a logical, well-supported conclusion. It is therefore **essential** that action agencies (e.g., FDOT, FHWA) evaluate and summarize project effects in a logical, objective and scientific manner that clearly supports the ultimate effect determinations and consultation conclusions. For example, technical reports, such as technical memos and **NREs**, should not only include appropriate effect determinations, but should also include sufficient supporting evidence and rationale to adequately justify these determinations.

Coordination with the Service(s) involves much more than simply submitting documentation and obtaining review comments. **Early** coordination should identify listed species and/or critical habitat present in the action area, and which species and habitats have the potential to be affected by the project. **Continual** coordination requires ongoing

communication with the Service(s) to document consensus, to identify areas of disagreement, and to resolve outstanding issues. **Strategic** coordination requires an evaluation of project-related listed species and habitat issues, thoughtful consideration of how to minimize project impacts to listed species and habitats, and an overall approach for conducting an efficient federal coordination/consultation process. Coordination could also include discussion on other protected species.

It is imperative to understand that the coordination/consultation process must be performed for **each** listed species and/or **each** type of critical habitat within the action area. For example, if there are six federally listed species present, there will be six separate effect determinations. If out of those determinations only two are “may affect, likely to adversely affect” determinations, then only those species or critical habitat(s) will require formal consultation. The level of federal coordination required (no consultation, informal consultation, or formal consultation) will be determined by each effect determination. **Table 27-1** provides a step by step process to follow for each effect determination. Species and/or critical habitat receiving a “no effect” determination are not subject to consultation, but are addressed in the appropriate documentation as described in **Section 27.2.2.1.1**. Species and/or critical habitat(s) subject to a “may affect, not likely to adversely affect” determination are handled via informal consultation (**Section 27.2.2.1.3**). Formal consultation occurs when a “may affect, likely to adversely affect” determination is made for listed species and/or critical habitat (**Section 27.2.2.1.4**), and must be initiated through the FHWA for federal projects.

Figure 27-2 provides a flow chart for the federal coordination/consultation process. The flow chart serves as a useful aid for each listed species and/or critical habitat that may be subject to federal coordination, as an effect determination and subsequent coordination will be required for each one.

The NMFS Southeast Regional Office recently updated the procedures for action agencies to submit **Section 7** consultation requests (**NMFS, 2013**). This procedure is provided in **Figure 27-3**. Consultation requests are submitted electronically to NMFS and must include all of the relevant project information necessary for the NMFS consulting biologist to clearly understand the project and its potential impacts to listed species. For projects that do not require a **BA**, NMFS has prepared a **Section 7 Checklist** and accompanying guidance to aid in document preparation and submittal (**NMFS, 2013**). The District should copy the NMFS ETAT representative on the electronic submittal, or notify them of the submittal via letter (**Figure 27-4**).

All coordination with the Service(s) should be documented in the project file and included in the final Environmental Document according to **Section 27.3.2.6.2**.

Re-initiation of consultation may be requested by FDOT, FHWA, or the Service(s) after initial consultation has been completed in response to changes in scope or design of the project, discovery of the presence of previously unknown listed species, or the listing of new species or designation of critical habitat.

27.2.2.1.1 “No Effect” Determinations

FHWA designated FDOT as a non-federal representative to conduct informal endangered species consultations with the Services on behalf of FHWA (**Section 27.1.3**). Consistent with this authority, where FDOT determines that an action will have “no effect” on a listed species or critical habitat (see **Section 27.1.2**), consultation with the Service(s) is not required. Note that a “no effect” determination means no effect whatsoever (neither detrimental or beneficial) to a species or critical habitat, in the short term or long term. Although consultation is not required for a “no effect” determination, the analysis supporting it should be documented in the project file, technical memo, or **NRE** as appropriate. Results and any coordination with the Service(s) (e.g., ETAT comments, communications) should be documented in the final Environmental Document as described in **Section 27.3.2.6.2**.

27.2.2.1.2 Section 7 Consultation

When federally listed species and/or critical habitat occur within the action area and a “may affect” determination applies, consultation with the Service(s) is necessary. There are two types of **Section 7** consultation processes: informal and formal. Informal consultation is a process designed to help determine whether formal consultation is needed. In contrast, formal consultation is a required process when a proposed action “may affect, is likely to adversely affect” listed species or designated critical habitat.

As stated in the **Endangered Species Consultation Handbook (USFWS and NMFS, 1998, E-21)**, “The ‘may affect’ evaluation looks not only at effects on the entire species or local management unit, but also considers the effect on individual members of the species. If even one individual may be affected, the biologist must conclude that there is a ‘may affect’ situation.”

The interaction between effect determinations and consultation procedures are primarily dictated by existing conditions (e.g., presence of wildlife corridors, listed species presence), combined with the project scope and viable alternatives. In some cases, formal consultation may be unavoidable, as in cases where major construction unavoidably impacts listed species that have a restricted range, or impacts critical habitat for a relatively long distance. However, in other cases, avoidance and minimization efforts can limit impacts to listed species and/or critical habitat to a degree that may change an initial “may affect, is likely to adversely affect” determination (formal consultation) to a “may affect, not likely to adversely affect” determination that triggers informal consultation. If compensatory mitigation can be identified or agreed upon during consultation, it should be documented.

Note that an effect determination must be reached for each listed species and/or each critical habitat within the action area. It takes only one “may affect, likely to adversely affect” determination to trigger formal consultation. If a project impacts only one listed species to a degree where formal consultation is required, it may be advisable to avoid or minimize the impact of a project (if possible) to an extent that justifies a “may affect, not likely to adversely affect” determination. These considerations are examples of the

benefits of the “early, continual, and strategic coordination” paradigm described in **Section 27.2.1**.

27.2.2.1.3 Informal Consultation

Informal consultation is the vehicle for determining the potential for adverse effects on a listed species or critical habitat, identifying ways to avoid them [such as Best Management Practices (BMPs) and conservation activities], and resolving project conflicts or misunderstandings. Informal consultation can provide FDOT the opportunity to implement project scope revisions or conservation activities prior to project implementation. Informal consultation may require an official species list (**Section 27.3.2.1.2**) and/or the completion of a technical memo or **NRE (Section 27.3.2.5)**.

The Districts initiate informal consultation with USFWS by contacting the local office (**Figure 27-4**) when listed species are potentially present within the project’s action area and may be affected by the action. Informal consultation with the NMFS is initiated by following the guidance provided in **Figure 27-3**. Coordination with the Lead Federal Agency may occur as necessary.

If listed species and/or critical habitat are present, FDOT must determine if the action may affect them. A “may affect” determination includes those actions that are “not likely to adversely affect” as well as “likely to adversely affect” federally listed species. During informal consultation the District(s) and the Service(s) work together to evaluate potential impacts on listed species, and eliminate or reduce potential impacts where possible. In many cases, the ultimate effect determinations may be influenced by project modifications. FDOT and the Service(s) may engage in continual coordination to reach agreement on effect determinations and project modifications necessary to accommodate particular listed species.

FDOT may reach an effect determination that the action “may affect, is not likely to adversely affect” listed species or designated critical habitat (i.e. the effects are beneficial, insignificant, or discountable). FDOT should submit a copy of the technical memo or **NRE** to the Service(s) for review along with a letter requesting concurrence on the effect determination. FHWA should also be copied. This information should include reasons supporting the determination, any modifications to the project and/or commitments to reduce impacts, and compensatory mitigation that were agreed upon during informal consultation. If the Service agrees with the effect determination, they will document that agreement in a concurrence letter. If the Service does not concur with the “may affect, not likely to adversely affect” determination, the Service will send a non-concurrence letter to FDOT. Then FDOT must either 1) request that FHWA initiate formal consultation, or 2) modify the project to avoid adverse impacts. Either option should assist FDOT in obtaining a “no effect” or “may affect, not likely to adversely affect” determination and require continued coordination with the Service(s).

In rare instances, one of the Services may not have enough information (or project details may not yet be available that are necessary) to concur with (or not concur with) an FDOT effect determination. In this situation, the Districts should coordinate with SEMO.

Together SEMO, the District, and FHWA will determine the appropriate course of action to advance the project. The Environmental Document should include a summary of the consultation and the reasons why it cannot be completed as described in the Service(s) letter. Commitments made during this coordination should be included in the Commitments section of the Environmental Document and recorded in the [Project Commitment Record, Form No. 700-011-35](#). An update to the commitment(s) must be provided in subsequent project Reevaluations.

27.2.2.1.4 Formal Consultation

Formal consultation can be required for any Environmental Document type, including Type 2 CEs. FHWA, FDOT, and the Service(s) work together to determine if options exist that could allow the action to advance without jeopardizing the species' existence or adversely modifying or destroying critical habitat. Although FHWA must initiate formal consultation, FDOT works closely with FHWA and the Services throughout the formal consultation process.

The differences between informal consultation and formal consultation are that formal consultation:

1. Occurs when there is a “may affect, likely to adversely affect” determination;
2. Must be initiated by FHWA rather than FDOT;
3. Has prescribed timeframes; and
4. Results in a **BO** which may determine whether the proposed activity will jeopardize the continued existence of a listed species (jeopardy) or destroy or adversely modify critical habitat (adverse modification).

In short, formal consultation is a manageable process that involves a higher level of scrutiny and analysis.

Formal consultation cannot be initiated until the **NRE** is completed. If FDOT determines that the action “**may affect, is likely to adversely affect**” listed species or designated critical habitat, then formal consultation must be initiated. The District must request that FHWA as the federal action agency initiate formal consultation. FHWA sends a written request to the Service(s). The written request, prepared with assistance from FDOT, includes an initiation package that describes the project and its relevance to federally listed species and habitats (see **USFWS and NMFS, 1998, 4-4**). Once the initiation package is received, the Service has 30 working days to review the package for completeness, and should provide a written acknowledgement of the consultation request to the action agency. Within the 30-day period, the Service must advise the action agency of any data deficiencies and request additional information to complete the initiation package (see **USFWS and NMFS, 1998, 4-1**).

The formal consultation period officially begins when the Service determines that the initiation package is complete. The **ESA** and **Section 7** regulations require that formal consultation be completed within 90 calendar days [**50 CFR § 402.14(c)**]. The Service strives to issue the **BO** during the formal consultation period, but in any case must deliver the **BO** to the action agency no later than 45 calendar days after the conclusion of formal consultation [**50 CFR § 402.14(e)**]. This 45-day period is often used by the action agency and the Service to review and refine the **BO**. The entire process can take up to 135 days to complete after the initiation of formal consultation, underscoring the need for “early, continual, and strategic coordination.”

In response to a request for formal consultation, the Service issues a **BO**, which is the document with the Service’s opinion as to whether the project “action” is likely to jeopardize the continued existence of a federally listed species or destroy or adversely modify critical habitat.

In contrast to “**may affect**” determinations, where individual members of listed species are the focus, jeopardy is determined at the listed species population level. “The determination of jeopardy or adverse modification is based on the effects of the action on the continued existence of the entire population of the listed species or on a listed population, and/or the effect on critical habitat as designated in a final rulemaking” (**USFWS and NMFS, 1998, 4-36**).

For non-jeopardy opinions, the **BO** will contain an **Incidental Take Statement**, which provides exemption from the **ESA Section 9** prohibitions to address actions that may cause an unintentional taking of non-plant species. Any terms and conditions provided in the **Incidental Take Statement** are “non-discretionary measures that are necessary and appropriate to minimize the impact of incidental take,” in order for the exemption in **Section 7(o)(2)** of the **ESA** to apply (**USFWS and NMFS, 1998, 4-49 and 4-53**).

In formal consultations, the key to reaching non-jeopardy opinions is to focus on the avoidance and minimization of project impacts, not compensation strategies: “Section 7 requires minimization of the level of take. It is not appropriate to require mitigation for the impacts of incidental take” (**USFWS and NMFS, 1998, 4-53**).

If the **BO** reaches a jeopardy or adverse modification conclusion, it will include reasonable and prudent alternatives and associated reasonable and prudent measures for implementing the project to avoid jeopardy or adverse modification. Note that the Services should include the action agency and applicant in developing reasonable and prudent alternatives and measures. Depending upon project-specific circumstances, several reasonable and prudent alternatives may exist, only one alternative may exist, or no alternatives may exist. Reasonable and prudent measures are the nondiscretionary (mandatory) actions developed for each alternative, which are necessary for a given alternative to avoid a jeopardy or adverse modification opinion. The reasonable and prudent measures developed for each of several alternatives may be the same or different, depending upon the specific alternative. FHWA in coordination with FDOT may:

1. Adopt the reasonable and prudent alternatives/measures;

2. Not advance the project;
3. Request an exemption from **Section 7(a)(2)**;
4. Modify the action or offer reasonable and prudent alternatives/measures not yet considered, and reinitiate consultation; or
5. Proceed with the action if upon review of the **BO** FHWA/FDOT believes that such action satisfies **Section 7(a)(2)**.

FHWA in consultation with FDOT must notify the Service(s) of its final decision on any proposed action that receives a jeopardy or adverse modification biological opinion.

27.2.2.1.5 Proposed and Candidate Species

Proposed species are those that are proposed in the **Federal Register** to be listed under **Section 4** of the **ESA**. Species and critical habitat proposed for listing may require a conference with the Service(s), according to **ESA Section 7(a)(4)** and **50 CFR § 402.10**, if agency action is likely to jeopardize the continued existence of such proposed species or result in the destruction or adverse modification of proposed critical habitat. Informal conference is an early interagency coordination, similar to informal consultation, where the Service(s) assist in determining effects and may advise on ways to avoid and minimize adverse effects to proposed species, or proposed critical habitat. Following informal conference, the Service(s) issue a conference report containing recommendations for reducing adverse effects. These recommendations are advisory until a listing becomes effective – but following the report's recommendations helps avoid future conflicts and the need to reinitiate a consultation once the species is listed or critical habitat is designated.

Formal conference must be initiated by FHWA and is required when a project is likely to jeopardize the continued existence of a proposed species, or is likely to adversely modify proposed critical habitat. Formal conference procedures are the same as formal consultation. The opinion at the end of formal conference is a conference opinion and follows the contents and format of a **BO**. When the species is listed or critical habitat is designated, the Services have the option of adopting the conference opinion as the **BO** for the project. An **Incidental Take Statement** issued with a conference opinion does not become effective unless the Services adopt the conference opinion as the **BO** (**50 CFR § 402.10; FHWA, 2002**).

Candidate species are not proposed for listing, but are species for which the development and publication of proposed rules for listing are anticipated. Effective candidate species conservation may reverse the species decline, ultimately eliminating the need for **ESA** protection. **Section 7** consultation is not required for candidate species though consideration of conservation measures may help to minimize project delays if a candidate species becomes federally listed before construction of a project has been completed (**FHWA, 2002**).

27.2.3 Other Federal Protections

Several species that are not federally listed and therefore not subject to **ESA** review may be protected by other federal regulations such as the **Migratory Bird Treaty Act (MBTA)** and/or the **Bald and Golden Eagle Protection Act**. Pursuant to the **MBTA**, it is unlawful to take, possess, buy, sell, purchase, or barter any migratory bird including feathers or other parts, nests, eggs, or products, except as allowed by implementing regulations. It should be noted that all non-exotic birds in the state of Florida are protected by the **MBTA**. Rules promulgated under the **MBTA (50 CFR Part 21)** prohibit the destruction of active nests (i.e., nests which contain eggs or flightless young) without a federal permit.

The federal **Bald and Golden Eagle Protection Act** prohibits anyone from taking, possessing, or transporting a bald eagle or golden eagle, or the parts, nests, or eggs of such birds without prior authorization. This includes inactive nests as well as active nests. The USFWS has Bald Eagle Monitoring Guidelines (**USFWS, September 2007**) that provides information for applicants proposing construction activities occurring within 1,500 feet of an active bald eagle nest during the nesting season. See [Part 1, Chapter 12, Environmental Permits](#), for guidance on permits for American bald eagle, Florida burrowing owl, and osprey.

27.2.4 Coordination with State Agencies

The procedures for coordination with the FWC are not as rigidly prescribed as those for the federal process, but the general process, overall goals, and documentation requirements are similar. FDOT places the same emphasis on “early, continual, and strategic coordination” with FWC, to ensure that state-protected species and habitat issues are considered from the earliest planning phase and carried through the PD&E, Design, and Construction phases of the project. **Figure 27-5** provides a flow chart for the state protected species process.

Coordination with FWC focuses on state listed wildlife species and habitats as well as other protected species (e.g., bald eagle, bats). In order to avoid regulatory duplication for threatened and endangered species, the following state rule applies: “Activities that result in take or incidental take of federally-designated Endangered and Threatened Species do not require a permit from the Commission when authorized by the U.S. Fish and Wildlife Service or the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service...” (**Rule 68A-27.007, F.A.C.**). Some species that are federally protected may also require coordination with FWC, such as Florida manatees and sea turtles.

For projects that qualify for ETDM screening, the ETDM process initiates the project-level coordination with FWC, as FWC is represented on the ETAT that participates in the Planning and/or Programming Screens (**Section 27.3.1.2**). The FWC ETAT should provide focused comments and a list of state listed species, or otherwise protected species that should be considered/analyzed during the PD&E Study (**Section 27.3.1.2.1**).

As the coordination with FWC progresses, through the PD&E Study, issues related to

particular state listed species, other protected species, and habitats are addressed, and FWC decisions are documented via correspondence and/or memos. The FWC typically requests that effect determinations, similar to those made for federally listed species (**Section 27.2.2.1**), be made for state listed species. The coordination process continues throughout the PD&E process, and commitments to FWC (e.g., wildlife crossing, species-specific survey) are recorded in the Environmental Document. Species-specific surveys or permitting may be necessary after conclusion of the PD&E phase.

Decisions made during coordination and FDOT commitments to FWC should be documented throughout the process to facilitate the transfer of information and commitments to subsequent project phases (Design and Construction). Any assumptions (e.g., road alignments) and/or conditions (e.g., species-specific surveys) that are associated with FDOT's commitments to FWC must be included in the Environmental Document. Some of these commitments may become part of a permit, or permit conditions in future phases.

27.2.5 Listed Plant Species

Under federal law, activities that may impact federally-listed plant species are subject to regulation under the **ESA**. However, destruction, damage or relocation of protected plants is not prohibited unless these activities take place on federal lands or are otherwise in violation of state law on other lands.

In cases where projects may impact lands under federal jurisdiction (commonly National Forests, National Park Service lands, National Wildlife Refuges, military bases, and areas designated as critical habitat), USFWS can determine through **Section 7** consultation that there are no other options available and that the action will not jeopardize the continued existence of the species. In those cases, USFWS may authorize destruction of plants on federal lands.

Input from the ETAT representatives during ETDM screening should identify federally listed plant species that may occur within the action area (see **Section 27.3.2.1**). Coordination with the appropriate agencies for federally listed plant species should always be included as part of the federal consultation process outlined in **Section 27.2.2.1**, if any listed plant species are potentially present. Should federally listed plant species be identified within the action area, they should be considered together with listed wildlife species during consultation to avoid and minimize overall project impacts. Based on consultation with USFWS, listed plants may be moved to suitable habitats in order to avoid direct impacts.

The only federally listed marine plant species, Johnson's seagrass (*Halophila johnsonii*), requires coordination with NMFS when a project may cause direct or indirect impacts. Johnson's seagrass occurs only in coastal environments of southeast Florida, between Sebastian Inlet and central Biscayne Bay. Critical habitat for this species has been designated in 10 distinct locations within its range (**50 CFR § 226.213**). For projects potentially impacting these areas coordination with NMFS should occur under the general federal consultation process outlined in **Section 27.2.2.1**.

State listed plant species are regulated by the FDACS, but state regulation only addresses the harvesting, transport, and/or sale of listed plant species. The plant species listed by the state as Endangered, Threatened, or Commercially Exploited is included on the Regulated Plant Index (**Rule 5B-40.0055, F.A.C.**). State rules do not specifically regulate or prohibit the incidental taking of state listed plants in the course of project activities, but general principles of avoidance and minimization should also apply to projects impacting these plant species. In cases where known occurrences of state listed plant species will be unavoidably impacted by project activities, the impacted plants may be transplanted to appropriate habitats nearby as a minimization/conservation measure. FDOT notifies FDACS and the Endangered Plant Advisory Council when bids for construction projects are first advertised according to **Chapter 5B-40, F.A.C.**

27.3 PROCEDURE

27.3.1 Level of Assessment

The level of assessment and documentation during the PD&E phase depends on the potential for protected species and habitat impacts. The protected species and habitat evaluation is intended to be flexible within the PD&E phase, as well as FDOT standard reviews for projects outside of PD&E.

Detailed evaluations are generally not warranted for transportation projects not qualifying for screening in the ETDM Environmental Screening Tool (EST) [typically Type 1 and Programmatic CEs and Non-Major State Actions (NMSAs)]. See [Part 1, Chapter 2, Federal Highway Administration Class of Action Determination](#) for clarification on projects that qualify for screening. Projects that do not require screening, based on analysis, have no significant effects. They typically require a flexible approach, but due to their less complex and comprehensive nature the evaluation can be streamlined.

A higher potential for protected species and habitat involvement typically exists with transportation projects qualifying for screening (typically Type 2 CE, EA, EIS, or SEIR). These project classifications may warrant a more detailed level of analysis and documentation. Most PD&E projects will have received prior consideration of protected species and habitat issues during the ETDM process. The results of the Programming Screen are available for review and verification in a **Final Programming Screen Summary Report**. The protected species and habitat evaluation in the PD&E Study focuses on important issues identified during the Programming Screen.

The level of project assessment for protected species and habitat during the PD&E phase depends on the potential for impacts. FDOT determines what is reasonable in the given context. If an impact is identified, it should be assessed regardless of the nature of the project.

27.3.1.1 Projects Not Qualifying for Screening

Protected species and habitat involvement may be identified for projects that do not require EST screening and advance straight to the Design phase. For transportation projects not qualifying for EST screening, the protected species and habitat evaluation should be in sufficient detail to ensure that the project considers protected species and habitat. For these projects FDOT typically makes a “No Effect” or a “May affect, not likely to adversely affect” determination. Sometimes species-specific conditions may be required in order to make this decision. If coordination is needed with the Service(s), additional documentation in the form of a technical memo will suffice, and a **NRE** is typically not necessary (**Section 27.3.2.4**). If during this coordination it is determined that formal consultation may be needed, the project may need to be developed through the Minor Categorical Exclusion (MiCE) process and coordinated with FHWA ([Part 1, Chapter 2, Federal Highway Administration Class of Action Determination](#)). Decisions and conditions should be documented in the project file, summarized in the Environmental Document, and addressed through incorporation into the final design plans. Documentation in the Environmental Document is as follows:

1. **Type 1 Categorical Exclusions** - Type 1 CEs may involve listed species and habitat as long as the documentation demonstrates the proposed project has no significant effects on them. For these projects, include a summary of listed species and habitat impacts, agency coordination and compensation for impacts (as appropriate) in the project file as supporting information to the [Type 1 Categorical Exclusion Checklist, Form No. 650-050-12 \(Part 1, Chapter 2, Federal Highway Administration Class of Action Determination\)](#). If a technical memo was prepared, it should be referenced in the checklist and included in the project file. If this analysis indicates a significant impact, the project cannot be processed as a CE. Agency coordination letters (e.g., concurrence letter) should also be included in the project file.
2. **Non-Major State Actions** - For a NMSA mark “No” on the **Non-Major State Action Checklist** to document that there are no listed species or critical habitat affected by the project ([Part 1, Chapter 10, State, Local or Privately Funded Project Delivery](#)). For these projects include a summary of listed species and habitat impacts, agency coordination and compensatory mitigation for impacts (as appropriate) in the project file as supporting information to the NMSA. If a technical memo was prepared it should be referenced and included in the project file.
3. **Type 2 Categorical Exclusions** - Some Type 2 CEs may not require screening through the EST. For these projects listed species and habitat impacts are documented as if the project was screened. See **Section 27.3.2.6.2** for guidance on documenting Type 2 CEs.

27.3.1.2 Projects Qualifying for Screening

Transportation projects qualifying for EST screening are generally more complex. In accordance with [Part 1, Chapter 2, Federal Highway Administration Class of Action](#)

Determination, qualifying projects must complete the ETDM Programming Screen and may also have completed the Planning Screen. As projects advance, protected species and habitat issues should be considered as follows:

1. **Planning Screen Evaluation** - Identify potential listed species and/or habitat within the project area that could affect the advancing of the project in a timely manner, assist with the elimination of fatally flawed alternatives, or require consideration of avoidance, minimization, or mitigation measures at this early planning stage. Protected species may also be identified during this evaluation.
2. **Programming Screen Evaluation** - Provide commentary about effects and summarize scoping recommendations to further understand the level of potential listed species and habitat impacts. Begin to prepare existing conditions for the Environmental Document. Protected species may also be identified during this evaluation.
3. **PD&E Evaluation** - Build upon previous evaluations by filling information gaps, coordinate with the Services and FWC on issues of concern identified in planning and programming screens, perform an impact assessment, and compare alternatives. Complete the appropriate level of protected species and habitat documentation based on the project and associated impacts to listed species. Document necessary commitments.
4. **Final Design** - Incorporate any commitments made in the **Project Commitment Record, Form No. 700-011-35**. If there are changes or updates identified during a review of the final plans, they should be documented in a design Reevaluation. Ensure the project meets federal and state regulations. During permitting re-initiate consultation if necessary.
5. **Construction** - Verify implementation of any protected species and habitat commitments (e.g., avoidance, inclusion, installation). Verify compliance with federal and state regulations.

27.3.1.2.1 ETDM Process Contribution to PD&E

For projects qualifying for EST screening, the proposed project is entered into the EST (see the **ETDM Manual, Topic No. 650-000-002**). The AN package may be distributed as part of the Programming Screen in the EST and includes a PED (**Part 1, Chapter 3, Preliminary Environmental Discussion and Advance Notification**). Protected species and habitat information is included in the PED, reflecting the District's initial consideration of the project's potential involvement with protected species and habitat resources. The PED should also identify the location of federally designated critical habitat and provide a description of how protected species and habitat are to be evaluated in the PD&E Study. The AN may also include a list of permits and a list of technical studies that may be needed.

The District uses the EST to electronically send the AN to the Services and FWC along

with other ETATs, state and federal agencies, and other organizations. If sent during the Programming Screen it initiates the project-level coordination with the Services and FWC. As ETAT members, the Services and FWC review the proposed project, respond with comments, provide a species list, and identify any critical habitat(s) within the action area. The ETAT should provide focused comments and actionable recommendations to avoid or minimize potential effects to protected species and their habitat. They should also identify potential permits, compensatory mitigation opportunities, technical studies, and other items as identified in their agency's **Agency Operating and Funding Agreements** with Florida FHWA, and FDOT (**FDOT, 2008a, 2011, 2012b**).

The EST reports and stores the ETAT review in the **Programming Screen Summary Report**, which includes comments related to protected species and habitat issues. This report provides a foundation for project managers to coordinate directly with the Services and FWC. For example, the ETAT should provide a list of potential listed species and/or habitats that warrant further review with the Services and/or FWC, as well as information on otherwise protected species. The EST reports can also provide an informed basis for formulating strategies to address potential protected species and habitat issues throughout the project life cycle (i.e., strategic coordination).

Information from the ETDM screening process should be used to prepare the PD&E scope of services and focus the protected species and habitat analysis/impact assessment. During PD&E, FDOT determines the project's involvement with federally listed threatened or endangered species, proposed (under review) threatened or endangered species, or designated or proposed critical habitat from resource agency comments and information included in the **Programming Screen Summary Report** and other information collected as part of the efforts described in **Section 27.3.2.1**. The Districts should review ETAT comments and Degree of Effect (DOE) determinations for the "Wildlife and Habitat" issue in the **Programming Screen Summary Report** as well as ETAT comments on other issues such as "Coastal and Marine," "Wetlands and Surface Waters," and "Water Quality and Quantity." FDOT should focus on comments from the Services and FWC as regulatory and resource experts. The **Programming Screen Summary Report** may identify a **NRE** as being needed in the "Anticipated Technical Studies" section of the report. Other sections of the report may be useful such as the "General Project Recommendations" and "Anticipated Permits" sections. Information from the screening should be used in preparing the existing conditions for the Environmental Document.

The Services or FWC comments should identify specific protected species or critical habitat that should be considered/analyzed during the PD&E Study. The Districts should use this list of species as a starting point for preparing the existing conditions for the **NRE** (see **Section 27.3.2.1.2**). Comments on the ETDM screening may also identify listed species habitats of concern or wildlife connectivity issues. As stated earlier, agency comments from screening can help define the PD&E scope of services. However, the associated DOE from the agencies is not a finding.

Coordination with the Services and other resource agencies should be continuous throughout the ETDM process. However, listed species and habitat impact assessment

and informal or formal consultation with the Services are not initiated until the PD&E phase. The ETDM Coordinator and Project Manager should coordinate internally with Permit Coordinators, District Environmental Offices [District Environmental Management Offices (DEMOs), Planning and Environmental Management Offices (PLEMOs)], and others who may be involved in the project following the screening.

27.3.2 PD&E Phase

27.3.2.1 Describe Existing Conditions

Upon initiating the PD&E Study, the District should coordinate with the Services and/or FWC to discuss comments from the **Programming Screen Summary Report** and ensure that potential protected species and habitat have not changed since the screening. The District should collect data and conduct field surveys to identify the initial existing conditions in the action area, such as the protected species and federally designated critical habitat that may occur there, as well as habitat types. Often the District can begin preparing existing conditions text before PD&E is initiated based on ETAT commentary. However, presence or absence of some species can change over time and initial screenings or surveys may be considered out of date by the Services or FWC at the time a project is scheduled to begin, if they are done too far ahead of time.

27.3.2.1.1 Define Action Area

The action area is defined as “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**)(**USFWS and NMFS 1998**). The action area boundaries for the project should be established in coordination with the Services. This coordination is important, as any disagreement regarding the action area boundaries can affect subsequent listed species and habitat analyses. Coordination with other FDOT Offices is suggested to determine any additional areas (e.g., staging areas) that may need to be included in the action area.

27.3.2.1.2 Identify Protected Species and Critical Habitat that May Occur in the Action Area

In developing the PED, the Districts use available information including their familiarity with the project area to identify protected species (federal, state, and otherwise protected) and/or critical habitat that may be affected by the project. The Service(s) online species lists, available data sources, current literature, and species specialists may also be consulted to help narrow down what federally listed species may be in the action area. Species and critical habitats “proposed” for federal listing, as well as federal “candidate” species, should be included on the list. Federally designated critical habitat within the action area should also be identified.

The District should also review official lists of state listed animals regulated by the FWC and plants regulated by the FDACS using online species lists and data, as well as other data sources (**Figure 27-6**).

Subsequently, the species of concern identified by the Services and/or FWC during the ETDM process should form the basis of a list of species to be analyzed in the PD&E Study. During the Programming Screen, the Service(s) should provide the official species list. Coordination with the Service(s) and/or FWC in PD&E may identify additional species to be included on the list.

27.3.2.1.3 Collect Data and Map Habitat

The best and most current scientific and commercial data available should be gathered from various sources to help determine the possibility for species occurrence within the action area. Sources include the Service(s)' websites, Geographic Information System (GIS) species occurrence data, studies or surveys conducted by the FHWA or FDOT, information from past **BOs**, and **NREs**, status reports and listing rules, critical habitat designations, recovery plans, habitat management guidelines, and species specific studies. Information on wide ranging or migratory species that may not be listed by state or federal regulations should be collected since migratory bird species are protected by the **MBTA of 1918**, as amended.

Habitat maps provide a baseline for analysis of species presence/absence and potential impacts. Land covers/land uses, the presence/absence and quality of suitable habitats, and rare natural communities in the project site should be mapped and described. The presence of critical habitat, and/or SHCAs, consultation areas, and focal areas should also be identified and mapped. The habitat mapping effort should include the evaluation of various existing digital data sets and historical and recent aerial photography.

A field survey conducted by a biologist is needed to compare existing site conditions with digital data and to map the presence, extent, and configuration of existing land uses/land covers, potential habitats, and rare natural communities. Photo-interpretation and extrapolation may also prove valuable in mapping large projects, and should be based on observations during field surveys.

27.3.2.1.4 Conduct Field Surveys

Appropriate field surveys should be conducted to determine and record the presence of protected species individuals, evidence of listed species utilization, and document the presence and quality of existing habitats. Areas in which listed species (federal and state) or species' habitat is known or suspected to occur within the action area should be surveyed for individuals or signs of individuals of the listed species. The field survey may result in observations of additional, previously unidentified listed species or habitats. All observations of listed species, signs of listed species, and species' habitat should be recorded, Global Positioning System (GPS) coordinates taken, and the quality of habitats should be assessed and recorded.

It is recommended that field surveys for federally and state listed species and habitats, as well as otherwise protected species, be conducted concurrently. This survey is often conducted concurrently with field verification of habitat mapping. During this survey, plant species should be identified and recorded for each vegetative community and dominant

species noted for each stratum present (e.g., canopy, subcanopy, shrub/understory, and ground cover).

Field surveys should be designed to account for life histories and behaviors (e.g., breeding, foraging, resting, migration, flowering, seeding) of the listed species that are expected to be, or could potentially be, present on a given site. Survey design should consider appropriate time of day and season of the year for species identification, as well as species' habitat quality and current site conditions including, but not limited to, recent and long-term fire and hydrologic history; recent and current climatic events (e.g., drought, flooding) and weather conditions; soil, topographic, and vegetative health or disturbances; noise levels; and typical human usage. Some listed species have agency developed or approved survey methodologies.

Consultation/coordination with the Services or FWC may identify the need to obtain quantitative data for a specific species; in those instances, a more intensive survey than is usually required may be warranted. Examples of quantitative data are percent cover for plants and population size for wildlife such as gopher tortoises. Methods for collecting quantitative data should be provided by the Services or FWC during consultation/coordination. Copies of survey results and associated field notes should be provided to the Services or FWC soon after surveys are completed. Note that some survey information, such as nest sites, may become outdated after one season. These species-specific surveys are typically not conducted until after the PD&E phase and closer to Construction and may be tied to project permitting (**Section 27.3.3.4**). During the PD&E Study, a commitment to conduct a species-specific survey later in the process may need to be included as a commitment in the Environmental Document ([Part 2, Chapter 32, Commitments](#)).

27.3.2.2 Continue Discussions/Correspondence with Agencies

When federally listed species and/or critical habitat may occur within the action area, informal consultation or formal consultation will be needed with the applicable Service (**Section 27.2.2.1**). Coordination with the Service(s) ETAT members via phone calls, emails and meetings throughout consultation should be ongoing, clearly documented, and kept in the project file.

When there is potential for involvement with state listed species, or valuable natural areas, coordination with the FWC ETAT is recommended (**Section 27.2.3**). Early coordination with FWC is advantageous to assess potential impacts to these natural resources. Coordination may save time later in the design phase of project development when state or federal permits may be required prior to commencement of work.

When wildlife crossing features are being considered, follow the [FDOT Wildlife Crossing Guidelines](#), which were developed in coordination USFWS and FWC. Wildlife crossing feature locations should be identified as early as possible in the project planning and development processes, and prior to project design. The guidelines note that "wildlife crossing feature(s)" may include, but are not limited to new or modified structures, such as bridges, bridges with shelves, specially designed culverts, enlarged culverts or

drainage culverts and/or exclusionary devices such as fencing, walls or other barriers, or some combination of these features. The guidelines were developed for use by FDOT to evaluate the appropriateness of including wildlife crossings (upland or wetland) and associated features for proposed projects on the State Highway System (SHS) and establish criteria to be considered during design. In cases where a FDOT District has an off-SHS project, the District will coordinate with the SEMO regarding possible inclusion of any wildlife crossing features.

When making commitments to the Services or FWC to address specific protected species and habitat issues of a project, it is critical that appropriate internal coordination efforts within the District (e.g., Design, Permitting, Structures, Construction and Maintenance Offices) are completed before such commitments are made.

27.3.2.3 Conduct Protected Species and Habitat Analysis/Impact Assessment

Protected species and habitat analysis begins with determining the potential for species occurrence in the action area, and identifying any designated or proposed critical habitat(s). The potential for species occurrence is derived by comparing the habitat mapping of the project site with known species ranges, habitat preferences, and the locations and proximity of known occurrences. This information is then used to evaluate the type and degree of potential impacts, if any, associated with the project.

The impact assessment includes comparing the species and habitat mapping data and field survey results (**Section 27.3.2.1**), with the proposed project footprint from the plan sheets (if available) to evaluate direct, indirect, and in some instances cumulative effects to listed species and habitats (see **Section 27.1.2** for definitions). It is also important to consider potential project impacts related to habitat connectivity for all wildlife, not just protected species, as habitat fragmentation can directly or indirectly impact multiple species. Although there are no federal or state requirements to avoid habitat fragmentation for unlisted species, this can be considered in coordination with the Services and/or FWC. If wildlife crossings are considered they must follow the [**FDOT Wildlife Crossing Guidelines**](#).

Since CEs are generally minor in nature and do not have significant impacts, indirect and cumulative impacts assessments will generally not be warranted. There may be exceptions, which can be evaluated on a case-by-case basis. It is recommended that the District Environmental Office staff coordinate with the District Design and Permitting staff when conducting the impact assessment.

The detailed results of the protected species and habitat analysis and impact assessment are documented in a technical memo or **NRE** and summarized in the Environmental Document. If more than one alternative is proposed, each alternative is then compared based on impacts to listed species and habitat using the analysis performed and documented in the Environmental Document.

If designated or proposed critical habitat is identified within the action area during the ETDM process, the identified habitat(s) must be evaluated for potential impacts. The steps outlined below are taken directly from the **ESA Consultation Handbook (USFWS and NMFS 1998)**, for determining whether a proposed action is likely to destroy or adversely modify critical habitat:

Review the status of the critical habitat as designated and the environmental baseline within the action area. The status and environmental baseline for any constituent elements may have been modified by actions considered in earlier **BOs**.

1. Those **BOs** should be consulted to determine the current baseline.
2. Evaluate the effects of the proposed action on the constituent elements of critical habitat.
3. Evaluate the cumulative effects in the action area on the critical habitat and its constituent elements.
4. Assess whether the aggregate effects of these analyses will appreciably diminish the value of the critical habitat in sustaining its role in both the survival and recovery of the species.

27.3.2.4 Technical Memo

In the case of projects involving minimal involvement with protected species and habitat, a technical memo may be substituted for a full-scale **NRE**. In this instance, an abbreviated report in the form of a brief technical memo may be completed and provided to the Service(s) and/or FWC. The technical memo should address the likely effects of the project and document coordination with the Service(s) during informal consultation. Technical memos should briefly discuss potential involvement with protected species or habitat and discuss how this involvement is not significant.

27.3.2.5 Biological Assessment and Natural Resources Evaluation

A **BA** is a technical report required by the Services if federally listed or proposed species or critical habitat “may be present” in the action area of a major construction activity. A major construction activity is defined in **Section 27.1.2** as major federal projects significantly affecting the environment; therefore all EIS’s require the preparation of a **BA**. This interpretation is consistent with that of **FHWA Memo, Management of the ESA Analysis and Consultation Process (FHWA, 2002)**. A **BA** may be requested by the Services for an EA, but is usually not requested for CEs. If a **BA** is required or requested by the Service(s), the District should prepare a protected species and habitat section of a **NRE** to be submitted to the Service(s) as a **BA**. If a **BA** is not required by the Service(s), and **NRE** components can fit into the Environmental Document, then the report is not necessary. The **NRE** should include information on listed, proposed, and candidate species, and associated critical or proposed critical habitat.

A **NRE** documents the protected species and habitat, wetlands, and Essential Fish Habitat (EFH) analysis/impact assessment. The “Protected Species and Habitat” section of the **NRE** is prepared to help make the determination of whether the proposed action is likely to: (1) adversely affect federally listed species or designated critical habitat; (2) jeopardize the continued existence of species that are proposed for listing; or (3) adversely modify proposed critical habitat. During informal consultation the conclusions contained in the **NRE** determine the need for formal consultation or conference.

The District should consider commentary from the Services and FWC ETAT members and consult with them as necessary when preparing the **NRE**. The contents are discretionary, and coordination with the Services and FWC is recommended to determine the depth of detail needed for the **NRE**.

27.3.2.5.1 Content of the Natural Resources Evaluation

If applicable, the **NRE** should include the assessment of impacts to protected species and habitat, wetlands, and EFH as separate sections. The protected species and habitat evaluation should be the first section titled “Protected Species and Habitat.” If the project proposes impacts to wetlands add a section titled “Wetland Evaluation.” Guidance on preparing the wetland evaluation section is in [Part 2, Chapter 18, Wetlands and Other Surface Waters](#). If the project requires an **EFH Assessment**, include a section titled “Essential Fish Habitat Assessment.” Guidance on preparing this section is provided in [Part 2, Chapter 11, Essential Fish Habitat](#).

The “Protected Species and Habitat” section of the **NRE** should include all state listed, federally listed threatened, endangered, proposed and candidate species and critical habitats, as well as other protected species that may be present within the action area. Information gathered from sources identified in **Section 27.3.2.1** should be used to prepare the **NRE**.

The content of a **BA** is described in **50 CFR § 402.12(f)**. For examples of **BA** templates and instructions see links in **Figure 27-6**. Any of these templates may be used for the Protected Species and Habitat section of the **NRE**.

When the Protected Species and Habitat section of the **NRE** is to be submitted to the Services as a **BA** the following information should be included:

1. Describe the proposed project, including project location, and emphasize those activities occurring within the project area inhabited by a federally listed species, and define the action area. The description of the proposed project should include all activities related to construction and emphasize both long-term and short-term anticipated impacts on identified federally listed species and suitable habitat in the action area. Project and design alternatives (including construction methods) should also be addressed. This description should be brief, and not include large amounts of information copied from the Environmental Document, such as purpose and need and project details.

2. Identify the federally listed species, proposed species, candidate species, critical habitat, and proposed critical habitat that occur, or could potentially occur within the action area (**Section 27.3.2.1**). Provide brief background information on these species in terms of overall range, population status, habitat needs, and life history requirements. Include only relevant information on the species. Details such as the species description (e.g., size, coloring) and general species information are not needed.
3. Describe the methods used to determine involvement of federally listed species and critical habitat within the action area.
4. Discuss the results of the comprehensive field survey of the project area (**Section 27.3.2.1.4**), describe the survey methodology, and provide details on the qualifications of persons doing surveys, what types of surveys were conducted and on what species, when they were done [for how long, what dates, what seasons (breeding, spawning, nesting, fall, spring) and what times of day], weather conditions, how often. Describe the specific area(s) that may be affected by the project. Identify any information pertinent to the comprehensive evaluation of federally listed species and/or critical habitat impacts. Also discuss the reliability and validity of the survey and assessment and whether future studies may be required to validate and/or update the survey results.
5. Identify any data gaps and discuss any difficulties in obtaining data pertinent to the comprehensive survey. Any data gaps or lack of information should be explained and their effects addressed.
6. Describe the methods and results of studies that contribute information relevant to determining actual and potential impacts of the proposed project or associated activities on a federally listed species or critical habitat. Types of studies include studies of mating, nesting, reproduction, feeding, and migration of those species that may be found in the action area.
7. Direct, indirect, and cumulative impacts should be evaluated.
 - a. The **NRE** should describe:
 1. Direct impacts associated with project construction and operation. Direct effects are those that occur in direct association with the construction or operation of the project, such as noise, dust, sedimentation/runoff, wetland disturbance/destruction, reduction in water quality, and changes to vegetative cover/composition.
 2. Indirect impacts resulting from project activities, such as development. Indirect effects are “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” (**USFWS and NMFS 1998**).

3. Cumulative effects of the project on a federally listed species or critical habitat. Cumulative effects are defined as “those effects of future state or private activities, not involving federal activities, that are reasonably certain to occur within the action area of the federal action subject to consultation” (**USFWS and NMFS 1998**). Note: this definition of cumulative effects is different than the Council on Environmental Quality (CEQ) definition. Guidance on evaluation of cumulative impacts to satisfy **NEPA** is provided in FDOT’s [Cumulative Effects Evaluation Handbook](#).
8. Discuss efforts that will be taken to avoid, reduce, or compensate for any adverse impacts to a federally listed species or critical habitat. This should include precautionary measures, construction design, conservation measures, and special construction methods that will eliminate or reduce adverse impacts. Special conservation measures and strategies may be appropriate and necessary for the avoidance of impacts. Any planned conservation measures for candidate species should also be described (**FHWA, 2002**).
9. Conclusions of the Services, including recommendations regarding further studies. The final step is to draw conclusions on the significance of impacts to federally listed species and critical habitat within the action area.
10. Any other relevant information.

The above information is used by FDOT to come to an “effect” determination for each federally listed species or designated critical habitat to be included in the **NRE**. Determinations are “no effect”, “may affect, not likely to adversely affect” (which includes beneficial, insignificant or discountable effects), and “may affect, is likely to adversely affect” (See definitions in **Section 27.1.2**). For proposed species or proposed critical habitat, a determination of “is likely to jeopardize/adversely modify proposed species/critical habitat” is possible. See **Section 27.2.2** for more detail on effect determinations.

The **NRE** should also discuss potential impacts to state listed species and include effect determinations for those species. The report should include information on state listed species and other protected species likely to occur in the action area. The presence of natural communities, such as FWC designated SHCAs and FNAI rare natural communities, should also be identified. Any species-specific surveys or permits that may be needed later in the process should also be discussed. This analysis and any coordination with the FWC should be included in the **NRE** and summarized in the Environmental Document.

27.3.2.5.2 Review by Resource Agencies

It is recommended that the **NRE** be provided to the Services before submission of an EA or DEIS for public availability when feasible, especially if they are a Cooperating Agency(ies). Before submitting to the Services, the District should provide a quality

control review of the document. The **NRE** can be distributed to the Cooperating Agencies for review.

After the District has received the Service(s)' comments on the **NRE**, the document should be updated to include agency comments and FDOT responses (if applicable). An addendum addressing the changes that have been made to the project in response to agency comments can be prepared as an alternative. The Environmental Document should also be updated to include the input from the Services.

For projects with “may affect, not likely to adversely affect” determinations, the District must send a letter to the applicable Service requesting concurrence on federal species effect determinations (**Section 27.2.2.1**). The Service(s) response letter should be documented in the Environmental Document according to **Section 27.3.2.6**. The Environmental Document and **NRE** should be updated accordingly. For final Environmental Documents these effect determinations are used to state the FHWA findings on listed species and habitat issues.

27.3.2.6 PD&E Documentation

Project documentation consists of maintaining the Administrative Record, completing the appropriate protected species and habitat section of the Environmental Document, and preparing protected species and habitat information for future commitment compliance.

27.3.2.6.1 Administrative Record

The District's Project Manager is responsible for collecting and maintaining the information gathered during the protected species and habitat evaluation as part of the project file. The documentation provides information for the next project phase and contains protected species and habitat commitments. All assessment materials (e.g., maps, analyses, survey reports, FDOT District staff comments) are contained in the project file. All technical reports (**NRE**, technical memo), agreements, and agency coordination should also be included.

27.3.2.6.2 Environmental Document

The results of the protected species and habitat evaluation are documented in the Environmental Document as described below:

1. **Type 2 Categorical Exclusions** - Evaluation material should be briefly summarized and included in the Type 2 CE documentation. Documentation includes a concise summary of protected species and habitat impacts and agency coordination. This information should be added to the wildlife and habitat section (Section 6.C.9) of the [Type 2 Categorical Exclusion Determination Form, Form No. 650-050-11 \(Part 1, Chapter 5, Type 2 Categorical Exclusion\)](#). Any protected species and habitat related commitments should be included in the Commitments and Recommendation section of the form (Section 7). The technical memo or **NRE** should be summarized, referenced, and placed in the project file. If

a concurrence letter was needed from the Services, it should also be referenced in the Type 2 CE documentation and included in the project file. FHWA findings should be included in the final Type 2 CE documentation.

2. **Environmental Assessments (EA) and Environmental Impact Statements (EIS)** - The results of the protected species and habitat analysis/listed species impact assessment detailed in the technical memo or **NRE** are summarized for direct inclusion in the Environmental Document.

- a. EIS Executive Summary – Federally Listed species and habitat information should be included in the Executive Summary of an EIS according to [Part 2, Chapter 3, EIS Executive Summary/FONSI](#). The following standard statement must be used in the Executive Summary for EISs when a “no effect” determination is applicable:

It has been determined by FHWA, that the project, as proposed, will have no effect on any threatened or endangered species.

If disagreements exist they should be identified in the Unresolved Issues and Areas of Controversy section of the FEIS Executive Summary ([Part 2, Chapter 3, EIS Executive Summary/FONSI](#)).

- b. EIS Affected Environment Section - The discussion of protected species and habitat in the Affected Environment section is generally limited to a description of protected species that may occur in the project area as well as habitat types that may be impacted by the proposed project alternatives. Documentation should also include maps showing the relationship of the project to the protected species identified and the relationship of the project to the habitat types.

This section does not include an evaluation of the potential impacts of the project on these species or habitats, but introduces the existing conditions. See [Part 2, Chapter 7, Affected Environment](#) for more detail on how to prepare this section of the EIS.

- c. Environmental Analysis - Most of the protected species and habitat information and documentation is provided in the environmental analysis section of an EIS (Environmental Consequences) or EA (Impacts). These sections should summarize the Protected Species and Habitat section of the **NRE** and present the results of the impact assessment, effect determinations, and recommend avoidance, minimization, compensation for impacts, and enhancement measures. This section should provide sufficient information on the impact assessment such that a reviewer can determine the validity of the methodology.

This section must describe the protected species and habitat impacts of the proposed project for each alternative. The information should have

sufficient scientific and analytical substance to provide a comparison of alternatives, as well as provide enough information for the decision-maker to determine the alternatives that would have the least and most impact to listed species and habitat resources. This includes impacts to listed species, critical habitat, and may include wildlife habitat connectivity and other protected species. The use of charts, tables, maps, and other graphics to illustrate comparisons between the alternatives and their respective impacts should be used. The results of this section should be used in the Alternatives matrix ([Part 2, Chapter 6, Engineering Analysis](#)).

The following standard statement (findings) must be included in the environmental analysis section of an EIS or EA if federally endangered or threatened species or critical habitat are not present in the action area:

This project has been evaluated for impacts on federally threatened and endangered species and designated critical habitat. A review was conducted to determine those possible threatened or endangered species which may inhabit the project area. This search resulted in findings that no federally listed species are likely to be present in the action area and no critical habitat was identified. This was determined after undertaking a listed species and habitat evaluation and a field survey of the project area by a biologist.

The determination was made that the project will not impact any proposed threatened or endangered species, any threatened or endangered species, or affect or modify any critical habitat. A determination of "no effect" has been made, and the project is consistent with the Endangered Species Act, as amended.

Any technical memos or the **NRE** should be summarized, referenced, and placed in the project file. See [Part 2, Chapter 8, Environmental Consequences or Impacts](#) for more detail on how to prepare these sections of the EIS or EA.

- d. Comments and Coordination - Correspondence with USFWS, NMFS, FWC, or other resource agencies regarding protected species and habitat information (e.g., coordination letters, emails, meeting minutes, comments on technical reports, concurrence letters) should be included in the Comments and Coordination section of an EA or EIS, referenced in the Environmental Analysis section, and added to the project file. See [Part 2, Chapter 31, Comments and Coordination](#) for more detail on how to prepare these sections of the EIS or EA.
- e. Commitments - Protected species and habitat commitments are documented in the Commitments section of an EA or EIS (see **Section 27-3.2.6.3**). See [Part 2, Chapter 32, Commitments](#) for more detail on how to

prepare this section of the EIS or EA.

The **NRE** or technical memo is sent to FHWA along with the Environmental Document, and is added to the project file.

3. **EA with FONSI** - Protected species and habitat information must be updated in an EA after the public hearing, and if there was a question of significance for impacts to federally listed species, the **findings** are documented in a FONSI according to [Part 1, Chapter 7, Finding of No Significant Impact](#) and [Part 2, Chapter 3, EIS Executive Summary/FONSI](#).
4. **State Environmental Impact Report (SEIR)** - The results of the protected species and habitat evaluation are included in the Environmental Analysis Section (Section B 1.C.7) of the **FDOT Project Evaluation Form**. Any protected species and habitat related commitments should be included in the Commitments section. See [Part 1, Chapter 10, State, Local or Privately Funded Project Delivery](#) for more detail on how to prepare a SEIR.
5. **Consultation Completion** - Regardless of the COA, there may be rare instances when one of the Services does not have enough information to concur with, or not concur with an FDOT effect determination. In these cases a justification must be provided in the Protected Species and Habitat section of the Environmental Document. This justification is provided by the Service in their response letter (see **Section 27.2.2.1.3**). Associated commitments must also be provided in the Commitments section of the [Type 2 Categorical Exclusion Determination Form, Form No. 650-050-11](#), EA or EIS. In these instances the following statement should be used:

Based on coordination with (insert U.S. Fish and Wildlife Service and/or National Marine Fisheries Service) to comply with Section 7 of the Endangered Species Act, FDOT commits to reinitiate consultation and provide information necessary to complete consultation on the [insert name of specie(s)] prior to advancing the project to construction. The letter from (insert U.S. Fish and Wildlife Service and/or National Marine Fisheries Service) is intended to provide reasonable assurance, per 23 CFR 771.133, that requirements of the ESA are able to and will be met prior to construction. The status of this commitment will be updated in any subsequent project reevaluations.

27.3.2.6.3 Commitments

Protected species and habitat commitments may be permit conditions, **Incidental Take Statement** commitments, or actions/activities required to advance the project and/or require action from the Contractor to implement. Commitments may include the retrofitting of structures to serve as wildlife passages, building of wildlife crossings, wildlife signage, crossing structure monitoring, protected species surveys during later phases,

and continued coordination with federal and state resource agencies. Commitments must be coordinated with other FDOT offices to ensure the commitment is feasible.

Commitments related to protected species and habitat made by FDOT over the course of the project study should be documented on the [Project Commitment Record, Form No. 700-011-35](#) according to FDOT [Procedure No. 700-011-035, Project Commitment Tracking](#). See [Part 2, Chapter 32, Commitments](#) for more information. These commitments should also be included in the Commitments section of the Environmental Document. Ensure clear and concise transmittal of the commitments to the subsequent project phases, including Final Design and Construction.

At the conclusion of consultation, the Services may include conservation recommendations, which are non-binding (discretionary) suggestions that are provided separately from a **BO** or **Incidental Take Statement (USFWS and NMFS, 1998, 4-62)**. The District should consult with District management prior to making conservation recommendations a commitment.

27.3.3 Design and Construction Phase

27.3.3.1 Reevaluation

Any change of protected species and listed species or habitat impacts or compensatory mitigation strategies after approval of the Environmental Document must be documented in the appropriate phase reevaluation or design change reevaluation as per [Part 1, Chapter 13, Reevaluations](#). Commitments and coordination should be updated and documented in the Commitment Status section of the **Reevaluation Form**.

27.3.3.2 Commitments

Protected species and habitat commitments established as a result of the PD&E Study and/or agency coordination must be documented in the Environmental Document and the [Project Commitment Record, Form No. 700-011-35](#) and transmitted to the Design and Construction Offices to be included in contract documents or be addressed through the permitting process. Follow FDOT [Procedure No. 700-011-035, Project Commitment Tracking](#) and [Part 2, Chapter 32, Commitments](#).

Protected species and habitat review during Design and commitment implementation during Construction consists of the following:

1. Review commitments specific to protected species and habitat.
2. Plans Received - Review for completeness; identify/confirm project limits.
3. Field Review - Conduct on-site field review(s) with appropriate professionals to confirm existing protected species and habitat resources within project limits that are addressed in the plans. Coordinate with regulatory agencies to assess the

need for any species specific surveys and or most up to date species survey protocols.

4. Regulatory Agency Coordination and Permitting - The District coordinates with regulatory agencies.
5. Impact Review - Review plans and provides comments on protected species and habitat resources that were identified and resolutions that should be coordinated with appropriate regulatory agencies or incorporated into the contract design plans.
6. Bid Document Review - Subsequently verify that completed final design plans and specifications incorporate required protected species and habitat resolutions into the bid documents or the request for proposals document.
7. Compliance during Construction - Ensure that the Construction Office verifies compliance with protected species and habitat commitments as well as federal and state regulations incorporated into the final design.
8. Construction Final Acceptance - Ensure that the protected species and habitat commitments (different from permit conditions) were addressed as specified in the contract plans, including modifications approved during construction. This is done by the Construction Office, but may require the Environmental Office involvement on occasion ([Construction Project Administration Manual \(CPAM\), Chapter 12, Section 12.1](#)).
9. Coordination with Maintenance Office - In cases where there are long term maintenance requirements (e.g., no-mow zones, weed control) coordinate with the District Maintenance Office. Depending on the nature and scope, a maintenance agreement may be necessary.

The District should verify commitment and regulatory compliance as the project advances. Additional minimization actions can be conducted during the project Design phase.

27.3.3.3 Design Considerations

Project commitments may include construction conditions for protected species, specific design specifications (e.g., the construction of wildlife crossings, or wildlife crossing features that can minimize take) or other project specific treatments (e.g., exclusionary fencing, curb heights, etc.). In some cases, plan notes may need to be considered. Plan notes must only be used when they are project-specific and do not repeat specifications, permit conditions and/or design standards.

27.3.3.4 Permitting

The federal and state permitting processes, as related to protected species and habitat issues, are relatively straightforward if the project team has engaged in “**early, continual,**

and strategic coordination” throughout Planning, PD&E, and Design. Through the ETDM process and involvement of ETAT representatives from the wildlife agencies (for projects that were screened in the EST), species lists and potential issues should have been identified and communicated early in the project. During PD&E these issues should have been addressed with resource agencies and project commitments made, therefore it is important that the Project Manager and Permit Coordinator coordinate during permitting. Prior to permitting, ongoing coordination and thorough documentation of wildlife agency decisions and commitments (if any) should have produced a well-developed basis for successful permitting.

Federal permitting authority for FDOT projects typically originates from proposed impacts to jurisdictional wetlands and/or other surface waters, or from bridge or causeway construction over navigable waters of the United States. The USACE regulates the discharge of dredged and fill material into waters of the United States, including wetlands, under **Section 404** of the **CWA**. The United States Coast Guard (USCG) administers the permitting program for bridge and causeway construction under a variety of statutes, including **Rivers and Harbors Act of 1899**, the **General Bridge Act of 1946**, and other authorities.

Regardless of whether the USACE and/or USCG function as lead or cooperating agencies for a given federal action, the issuance of federal permits requires coordination with USFWS and/or NMFS as a cooperating agency. USFWS or NMFS works with the permit applicant and the permitting agency to evaluate potential impacts to federally listed species and habitats, following the **ESA Section 7** consultation process outlined previously in **Section 27.2.2.1**.

As part of the permitting process, the Service(s) may request additional data, including recent species-specific field surveys, confirmation of habitat mapping and characterization, and data on any observed listed species occurrences. This information provides the “facts on the ground” that complement the PD&E Study results.

Issuance of federal permits from USACE and/or USCG is contingent upon approval from the Service(s) that the project has “no effect,” or “may affect, is not likely to adversely affect” federally listed species, or that the action “may affect, is likely to adversely affect” one or more listed species and incidental take is authorized by an **Incidental Take Statement** in a **BO**.

To ensure that **ESA Section 7** consultations do not delay the issuance of federal permits for transportation projects, the Districts are encouraged to conduct “early, continual, and strategic coordination” with the Lead Federal Agency, USFWS, and/or NMFS. This active coordination can be the difference between an efficient federal permitting process and significant permitting delays.

Issuance of a state general, individual, or conceptual Environmental Resource Permit (ERP) from the Florida Department of Environmental Protection (DEP) or a Water Management District (WMD) requires that the activity “will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface

waters” (e.g., **Rule 62-330.301(d), F.A.C.**). FDOT projects generally require a general or individual ERP. As part of the state permitting procedure for the ERPs, the WMD sends the permit application to the USACE and other agencies (e.g., FWC and the Department of State, Division of Historical Resources). The Project Manager and Permit Coordinator should facilitate the communication of relevant resource agency decisions documented during the PD&E Study and commitments to DEP or the WMD as part of the state permit application process.

2.3.3.4.1 Federal and State Protected Species Permits

Federal and state permits may be required for unavoidable impacts to or for take of protected species. Species protected by the federal **ESA** may require an Incidental Take permit from USFWS or NMFS. The FWC also requires Incidental Take permits for activities that may result in take of state listed species. These species also may be federally listed.

Species such as the American Bald Eagle, Florida burrowing owl, osprey and gopher tortoise are not subject to **ESA** review, yet may require species specific permits during project permitting. Detailed guidance on the most common protected species permit types required for transportation projects is provided in [Part 1, Chapter 12 Environmental Permits](#).

27.3.3.5 Contractor Requirements

FDOT developed **FDOT Contractor Requirements for Unanticipated Interaction with Protected Species** for use by contractors when interaction with protected species is not anticipated and the following conditions exist: A “no effect” determination has been made, no commitments have been made (as described in FDOT [Procedure No. 700-011-035, Project Commitment Tracking](#)), and/or no permit conditions exist. These requirements address common protected species that may be encountered on FDOT projects and provides guidance in the event that a protected species is encountered during construction activities. These requirements should be provided to the Construction Project Administrator (CPA), Consultant Construction Engineering and Inspection (CCEI), Contractor, Project Manager, and Field Superintendents during the pre-construction meeting or at the pre-proposal meeting for Design-Build projects. A link to these requirements is provided in **Section 7.1.4** of the [Florida Department of Transportation Standard Specifications for Road and Bridge Construction](#).

27.3.3.6 Off-project Activities

Off-project activities performed by FDOT or Contractor may impact protected species or critical habitat. Examples of such activities are borrow pits, disposal sites, concrete plants, asphalt plants, and material or equipment storage sites also known as staging areas. Stormwater management facilities identified in project plans should be surveyed like the rest of the project during permitting. Off-project activities are not exempt from the requirements of **Section 7** of the **ESA** or state regulations.

A field survey should be performed by District environmental personnel for all Contractor activities which might involve federally listed species consideration in accordance with **Section 7.1.4** of the [Florida Department of Transportation Standard Specifications for Road and Bridge Construction](#). Survey methods in **Section 27.3.2.1.4** also apply to off-project locations. A **NRE** should be completed and **Section 7** consultation may be requested by the Services for any activity which, through reduction of habitat or physical presence, would impact a federally listed species or critical habitat. The presence of state listed species, or otherwise protected species must also be determined in off-project impact areas. The procedures for this determination are the same as described in this chapter for the project area. Coordination may be necessary with both the Services and FWC.

27.3.3.6.1 Procedure

At the preconstruction conference, District staff must notify the CPA that it is the Contractor's responsibility to submit a written request for the District to conduct a biological evaluation of any site where off-project activities are proposed. The District Environmental Office must notify the CPA that the Contractor request necessary biological evaluations with sufficient lead time so they may be completed without delaying the related off-project activity.

The written request should include the location of the activity (Section, Township, Range, County, City) with a map identifying haul or access roads. The project description should be identified by Financial Management Number and Contract Number. This will provide District environmental personnel the opportunity to research if any protected species are reported for the specified area. The District environmental personnel will notify the Contractor and Resident Engineer of their scheduled arrival (date, time) for the evaluation of the site.

Upon completion of the field evaluation, if no species issues identified, the District will send a written notice to the Contractor stating that they may proceed with the project. The CPA, District Materials Engineer, and Resident Engineer should be copied. A sample letter is provided in **Figure 27-7**. The District should notify the Contractor if a potential listed species is identified in the off-project area and if **ESA Section 7** consultation is required. If **ESA Section 7** consultation is required, the District Environmental Office and CPA should coordinate with the Contractor on how to proceed.

If formal consultation is necessary, FDOT will coordinate with FHWA and it will be conducted in accordance with **Section 27.2.2.1.4**. Upon completion of the consultation process, FHWA will provide written record of the resulting determination and its intent to the District Environmental Office, CPA, and the Resident Engineer. The Contractor shall comply with the determination.

If state listed species, or otherwise protected species are identified in the off-project area, the District must coordinate with FWC because state regulations must be addressed and state compliance is required.

27.3.3.7 Maintenance Activities

Maintenance activities such as roadside mowing, culvert repair/replacement, herbicide/fertilizer application, tree/shrub trimming, guardrail repair, bridge maintenance and repair typically are undertaken without impacting protected species or wildlife habitat. District Environmental Office staff should assist the Office of Maintenance when protected species issues arise (**Section 27.3.3.5**) or maintenance activities that may affect protected species or wildlife habitats are planned. Examples include:

1. Culvert repair/replacement in areas known to be inhabited by the Panama City Crawfish
2. Mowing and or herbicide/fertilizer application on roadsides inhabited by listed plant species
3. Bridge repair/maintenance in bridges that may be roosting sites for protected bat species
4. Bridge repair/maintenance requiring in water work
5. Tree/shrub trimming in mangrove areas

A field survey should be performed by District environmental personnel for maintenance activities which might involve federally listed species consideration in accordance with **Section 7** of the [Florida Department of Transportation Standard Specifications for Road and Bridge Construction](#). Survey methods in **Section 27.3.2.1.4** apply to off-project locations as well as the project area. A **NRE** or technical memo should be completed and **Section 7** consultation may be requested by the Services for any activity which, through reduction of habitat or physical presence, would impact a federally listed species or critical habitat. Coordination may be necessary with both the Services and FWC.

27.4 EMERGENCY CONSULTATION

In cases where emergency actions may affect federally listed species and/or critical habitats, emergency consultation with the Services is required by **Section 7** of the **ESA**, as amended (**50 CFR § 402.05**). An emergency is defined by USFWS as a situation involving an act of God, disasters, casualties, national defense or security emergencies, etc., and includes response activities that must be taken to prevent imminent loss of human life or property. Consultation may be conducted informally through alternative procedures that the Service(s)' Director determines to be consistent with the requirements of the **ESA**. Emergency consultation procedures allow federal agencies to incorporate endangered species concerns into their response actions - they are **not** intended to interfere with emergency response efforts.

The key step in emergency consultation is early contact with the appropriate USFWS Ecological Services office. See **Figure 27-4** for Florida county map and USFWS contact information. Initial emergency consultation procedures are as follows:

1. The District should initiate consultation by telephoning or faxing the Service(s). Written documentation of the proposed action is preferred by the Service(s) as circumstances allow.
2. The Services should respond as soon as possible (within 48 hours) by written correspondence, with recommendations to minimize the effects of the emergency response action on federally listed species or their critical habitat.

The guidelines for emergency consultation may depend upon whether the actions take place within a Presidentially-declared disaster area. A good example is provided by a USFWS Region 4 letter (**Figure 27-8**) addressed to federal agencies following Hurricane Katrina (**USFWS, 2005**):

“Within the declared disaster areas, section 7(p) of the ESA should be interpreted to mean that restoring any infrastructure damaged or lost due to the hurricane back into the original footprint does not require ESA consultation with the Service.

For storm related activities outside of the declared disaster areas, Federal agencies should use the emergency consultation procedures covered in **50 CFR Part 402** and in Chapter 8 of the Service’s **Section 7** Handbook. These guidelines indicate that agencies should contact the Service by phone, the Service should offer recommendations verbally to minimize the effects of the emergency response action on listed species or their critical habitat, and the Service should follow up with written correspondence to the action agency documenting the conversation. The guidelines indicate clearly that the Service should not stand in the way of response efforts. After the emergency is under control, the action agency initiates formal consultation if listed species were adversely affected.”

Recommendations from the Services may include strategies to avoid and/or minimize incidental take, and conservation recommendations to help protect federally listed species and their habitats within the emergency action area. In their recommendations, the Services should indicate if the emergency actions may result in “jeopardy” or “adverse modification” to federally listed species or critical habitat, and if any means for reducing or avoiding this effect are apparent. **Figure 27-9** is an example of recommendations from USFWS concerning an emergency consultation. The District must implement and maintain the on-site protective measures that the Service(s) identified during the emergency **Section 7** consultation.

As soon as possible after the emergency is under control, formal consultation with the Services **must** be initiated if federally listed species or critical habitat have been adversely affected. Procedurally, the emergency formal consultation is treated like any other formal consultation by the Services, which means consultation must be initiated by FHWA.

If FHWA must initiate formal consultation after an emergency, the District should request FHWA send the following information to the Services:

1. A description of the emergency;
2. A justification for the expedited consultation; and
3. An evaluation of the response to, and the impacts of, the emergency on affected species and their habitats. This should include documentation demonstrating how the Services' recommendations were implemented, and the results of implementation in minimizing take.

After concluding formal consultation, the Service(s) will then issue an emergency **BO** which documents its recommendations and the results of agency implementation of the recommendations on federally listed species. This **BO** also may document the actual or estimated take occurring from the emergency response actions.

The Services' emergency consultation procedures are found in the **USFWS/NMFS Endangered Species Consultation Handbook, Sections 8.1 and 8.2**. For additional information on current emergency coordination procedures, current contact information, executive orders, and best management practices, view the SEMO website or the Service(s)' websites.

Coordination with FWC in cases where emergency actions may affect state listed and/or protected species is recommended.

27.5 REFERENCES

23 Code of Federal Regulations (CFR) Part 771. Environmental Impact and Related Procedures. 1987.

<http://www.environment.fhwa.dot.gov/projdev/pd2implement.asp>

40 CFR §§ 1500-1508. Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act. 1978. http://energy.gov/sites/prod/files/NEPA-40CFR1500_1508.pdf

50 CFR Part 402. Interagency Coordination-Endangered Species Act of 1973, as amended; Final Rule, FR 19926-19963, June 3, 1986. http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title50/50cfr402_main_02.tpl

Chapters 68A-27, Florida Administrative Code (F.A.C.), Rules Relating to Endangered or Threatened Species.

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=68a-27>

Chapter 163 Part II, Florida Statutes (F.S.), Growth policy; County and Municipal Planning; Land Development Regulation. <http://www.leg.state.fl.us/Statutes/>

Chapter 379, F.S., Fish and Wildlife Conservation. <http://www.leg.state.fl.us/Statutes/>

Clean Water Act of 1972, as amended. <http://www.fws.gov/laws/lawsdigest/fwatrp.html>

Endangered Species Act (ESA) of 1973, as amended 1978, 1979 and 1982.

<http://www.fws.gov/endangered/esa-library/pdf/ESAall.pdf>

Florida Department of Transportation (FDOT). 2005. Sociocultural Effects Evaluation Handbook. <http://www.dot.state.fl.us/emo/pubs/sce/SCE-Handbook-2005.pdf>

FDOT, 2008a. Agency Operating Agreement for Continuing the Efficient Transportation Decision Making Process in Florida Between U.S. Fish and Wildlife Service and the Florida Department of Transportation and the Federal Highway Administration. 12/1/2008-11/30/2014

FDOT, 2008b. Environmental Policy, Topic No. 000-625-001.
<http://fdotwp1.dot.state.fl.us/ProceduresInformationManagementSystemInternet/FormsAndProcedures/ViewDocument?topicNum=000-625-001>

FDOT, 2011. Agency Operating Agreement for Continuing the Efficient Transportation Decision Making Process in Florida Between National Marine Fisheries Service and the Florida Department of Transportation and the Federal Highway Administration. 7/25/2011-07/24/2016

FDOT, 2012a. Agency Operating Agreement for Continuing the Efficient Transportation Decision Making Process in Florida Between Florida Fish and Wildlife Conservation Commission and the Florida Department of Transportation and the Federal Highway Administration. 1/1/2012-12-31-2016

FDOT, 2012b. Project Commitment Tracking, Topic No. 700-011-135.
<http://fdotwp1.dot.state.fl.us/ProceduresInformationManagementSystemInternet/FormsAndProcedures/ViewDocument?topicNum=700-011-035>

FDOT, Most current, Florida Department of Transportation Wildlife Crossing Guidelines.
<http://www.dot.state.fl.us/emo/pubs/APPROVED-Wildlife%20Crossing%20Guidelines3-13.pdf>

FDOT, Current. Standard Specifications for Road and Bridge Construction, Florida Department of Transportation, Section 7-1.4.
<http://www.dot.state.fl.us/programmanagement/Implemented/SpecBooks/default.shtm>

Florida Highway Administration (FHWA), 1987. Guidance for Preparing and Processing Environmental and Section 4(f) Documents.
<http://environment.fhwa.dot.gov/projdev/impta6640.asp>

FHWA, 2002. Management of the ESA Environmental Analysis and Consultation Process. February 20, 2002 Memorandum to Division Administrators from the Director of Office of Natural Environment, FHWA.
http://environment.fhwa.dot.gov/ecosystems/laws_esaguide.asp

FHWA, 2003a. Designation of a Non-Federal Representative to conduct Informal Consultation Under Section 7 of the ESA. March 3, 2003 letter to Sam D. Hamilton, Regional Director of the SE Region USFWS from George Hadley/James E. St. John, Division Administrator of USDOT Federal Highway Administration

FHWA, 2003b. Designation of a Non-Federal Representative to conduct Informal Consultation Under Section 7 of the ESA. February 28, 2003 letter to Roy E. Crabtree, Regional Administrator of the NMFS from George Hadley/James E. St. John, Division Administrator of USDOT Federal Highway Administration

FHWA, 2005. Endangered Species Act Legal Analysis. February 18, 2005 Memorandum to Division Administrators from the Associate Administrator for Planning, Environment, and Realty, FHWA

Fish and Wildlife Coordination Act of 1934, as amended.
<http://www.law.cornell.edu/uscode/text/16/chapter-5A/subchapter-I>

Florida Administrative Code (F.A.C.), Chapter 5B-40 (Preservation of Native Flora of Florida). <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=5b-40>.

Marine Mammal Protection Act of 1972, as amended.
<http://www.nmfs.noaa.gov/pr/laws/mmpa/text.htm>

Migratory Bird Treaty Act of 1918, as amended.
<http://www.fws.gov/laws/lawsdigest/migtrea.html>

National Environmental Policy Act of 1969 (NEPA) as amended (42 USC § 4321 et seq.) http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/Req-NEPA.pdf

NMFS, 2013. How to Submit an Endangered Species Act (ESA) Section 7 Consultation Request to National Marine Fisheries Service (NMFS) Southeast Regional Office. http://sero.nmfs.noaa.gov/protected_resources/section_7/consultation_submission/index.html

USFWS, 2013. Critical Habitat: Frequently Asked Questions.
www.fws.gov/endangered/what-we-do/critical-habitats-faq.html

USFWS and NMFS, 1998. Endangered Species Consultation Handbook. Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act, March 1998 Final.
http://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf

27.6 HISTORY

10/01/1991

Table 27-1 Effect Determinations

STEP	EFFECT DETERMINATIONS		
	No Effect	May Affect, Not Likely to Adversely Affect	May Affect, Likely to Adversely Affect
1.	No consultation with Services required.	District initiates informal consultation.	NRE is completed. At least one listed species receives a “may affect, likely to adversely affect” determination.
2.	Document the “No Effect” determination in the Environmental Document.	District works with Service(s) to evaluate and reduce potential impacts to species and/or critical habitat.	District sends a written request to FHWA, requesting initiation of formal consultation. The request includes an “initiation package” that describes the project and potential impacts.
3.	Process complete.	FDOT reaches determination of “May Affect, Not Likely to Adversely Affect.”	FHWA initiates formal consultation with the Service(s).
4.		FDOT sends package to Service(s) for review and concurrence, with the reasons supporting determination, and project modifications and/or commitments to reduce potential impacts.	The Service has 30 working days to review the initiation package for completeness. If incomplete, a request for additional information is issued.
5.		If Service sends a concurrence letter, FDOT documents the concurrence and any associated commitments in the Environmental Document. Process complete.	FHWA, FDOT, and Service(s) work together to avoid a listed species jeopardy opinion, and/or avoid destruction or adverse modification of critical habitat, while maintaining the project purpose and viability (if feasible).
6.		If Service sends a non-concurrence letter, FDOT must either a) request that FHWA initiate formal consultation; or b) modify the project to obtain concurrence.	Formal consultation must be concluded within 90 days of receiving a complete initiation package. The BO must be delivered to the action agency (FHWA) within 45 days after conclusion of formal consultation.
		If Service does not have enough information to concur or not concur; the Service will provide justification. FDOT discloses justification and provides a commitment in the Environmental Document.	If a non-jeopardy BO is issued (no jeopardy to listed species and/or no destruction or adverse modification of critical habitat exists), the Service issues an Incidental Take Statement in association with the BO. The Incidental Take Statement conditions are non-discretionary and must be included by FDOT in the Commitments documentation. Process complete.
			If BO reaches a jeopardy or adverse modification conclusion, it will include reasonable and prudent alternatives to avoid jeopardy and/or adverse habitat modification. FHWA must notify the Service of its final decision for proceeding with the project.

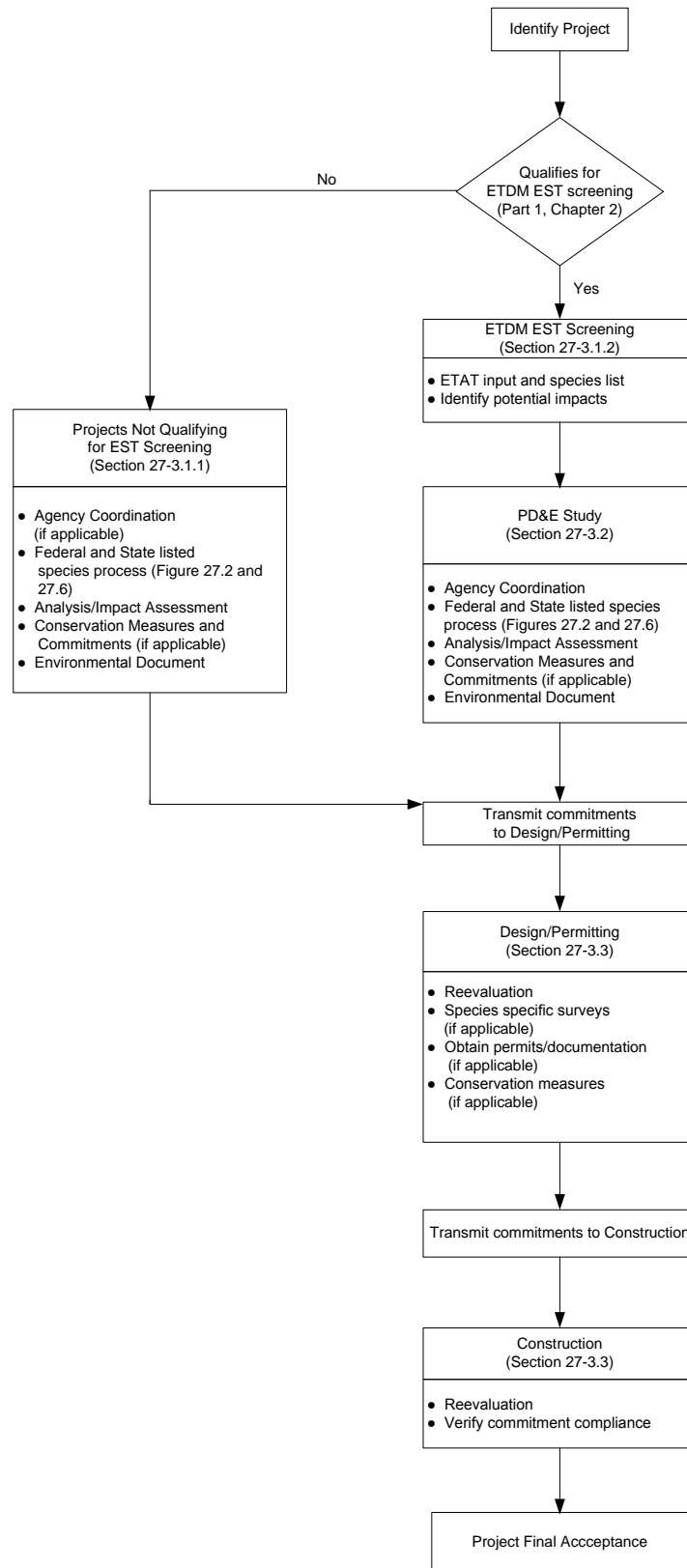
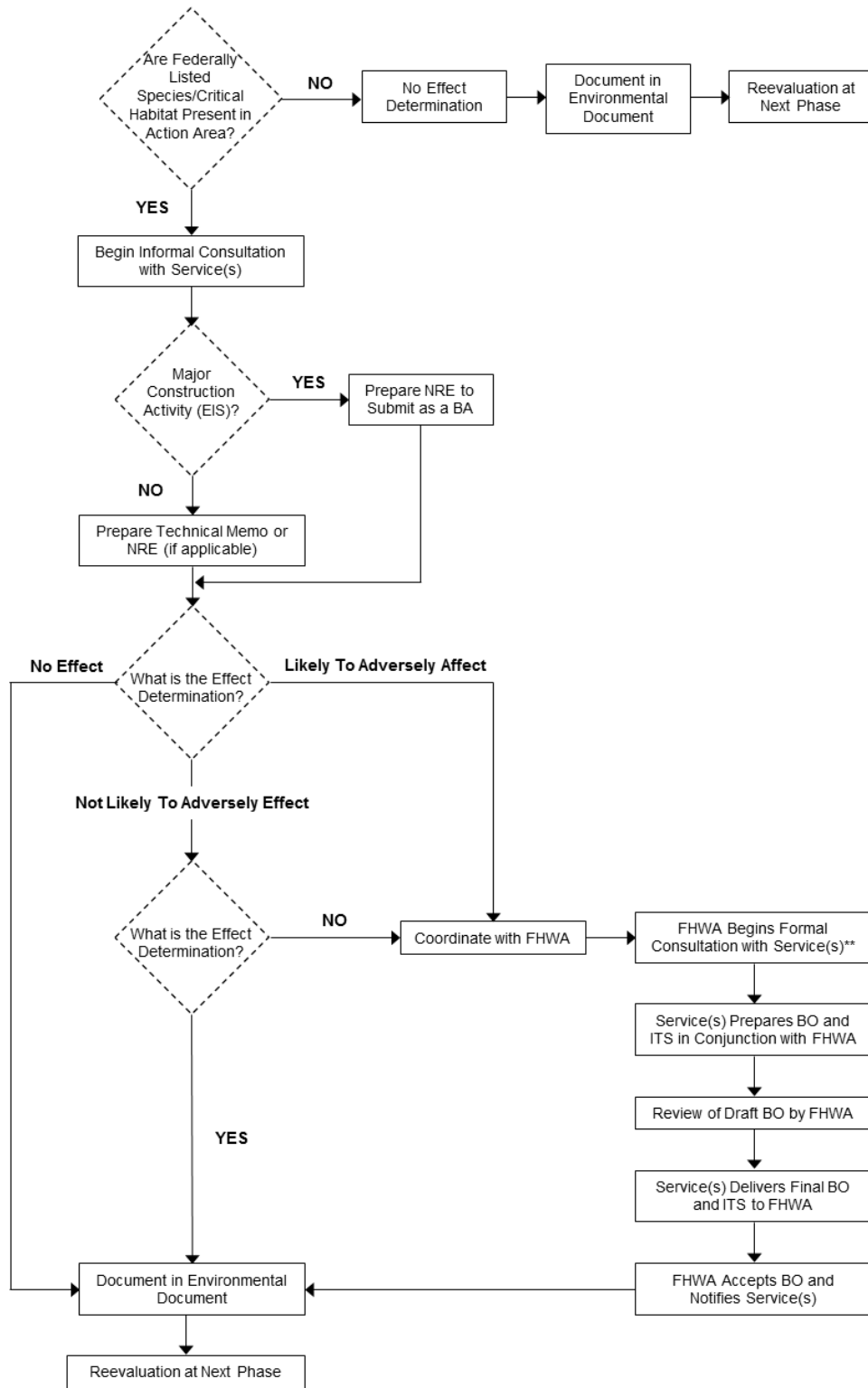


Figure 27-1 Protected Species and Habitat Evaluation Process



*The effect determination is performed for each federally listed species and the process is dictated by the "highest" effect determination.

**For guidance on jeopardy determinations, see Section 27.2.2.1.4

Figure 27-2 Federally Listed Species Process



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southeast Regional Office
263 13th Avenue South
St. Petersburg, Florida 33701-5505
<http://sero.nmfs.noaa.gov>

7/16/2013

MEMORANDUM FOR DISTRIBUTION

Ref.: How to Submit an Endangered Species Act (ESA) Section 7 Consultation Request to
National Marine Fisheries Service (NMFS) Southeast Regional Office

Dear Action Agency:

NMFS Southeast Regional Office Protected Resource Division (PRD) is updating the procedures for action agencies to submit ESA Section 7 consultation requests. We are receiving a very high volume of consultation requests. To deal with this volume of requests we are trying to take advantage of more electronic processing including a new method of consultation request submittal. We also want to provide additional guidance on how you can make sure your consultation contains complete information so you don't experience further delays during our review. This letter will detail (1) where to submit a consultation request, (2) what to submit, and (3) how to track your submission.

1. Where do I submit my Section 7 consultation request?

We request that all ESA Section 7 consultation requests/packages be submitted electronically to nmfs.ser.esa.consultations@noaa.gov. Electronic submittal to this dedicated e-mail address allows us to quickly log consultation requests received into NMFS's Public Consultation Tracking System (PCTS), to assign and forward them to the appropriate PRD consultation biologist, and to keep an electronic backup of requests received. This e-mail account is capable of receiving messages with attachments up to 25MB. Send the request and all supporting documentation to nmfs.ser.esa.consultations@noaa.gov.

If there are extenuating circumstances that require information be mailed, please send to:

National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Southeast Regional Office
Protected Resources Division
263 13th Avenue South
St. Petersburg, Florida 33701-5505

2. What do I need to submit?

All Section 7 consultation requests must include relevant information for the consulting biologist to clearly understand the project: its location; listed species and/or critical habitat found in the action area; a determination of the project's effects to listed species and/or critical habitat (e.g., no effect; may affect, but not likely to adversely affect; likely to adversely affect); and a clear



**Figure 27-3 National Marine Fisheries Service Memorandum
for Distribution**

discussion of the potential routes of effects to listed species and/or their critical habitat. These “biological assessments” should be appropriate to the scope of the proposed project. By regulation, biological assessments are required under Section 7(c) of the ESA of 1973, if listed species or critical habitat may be present in the area affected by any “major construction activity” as defined in 50 CFR § 404.02: “a construction project (or other undertaking having similar physical effects) which is a major federal action significantly affecting the quality of the human environment.”

For projects that are minor (i.e., do not meet the definition of “major federal actions”, as defined in 50 CFR § 404.02), we have created a [Section 7 Checklist](#) and accompanying [Section 7 Checklist Procedures](#) document that lists the essential information needed by our consultation biologists to respond timely to the consultation request. This information allows us to determine the level of direct and indirect impacts a project will have on ESA-listed species and their critical habitats. Examples of direct impacts include those effects directly related to the construction of the project, including loss of foraging or refuge habitat, death of species from construction equipment interactions, impacts from turbidity, and impacts from noise generated during construction. Examples of indirect impacts are things that may happen later in time as a result of the completion of the project, including more vessel traffic that could strike listed species, more fishing that could capture listed species, and more pollution. Any additional information you provide related to the project (including submerged aquatic vegetation surveys, site photographs, engineering project design drawings, historically permitted actions, etc.) will help speed the consultation process.

Please visit our Web site (http://sero.nmfs.noaa.gov/protected_resources/section_7/) to find useful resources to assist you in your consultation request submission. Here you will find the Action Agency Consultation Package links which contain the guidance for submitting an ESA Section 7 consultation request, effects determination guidance, species and critical habitat lists, consultation tracking in PCTS, observer lists, emergency consultations, frequently requested biological opinions, and ESA policies, guidance, and regulations.

3. How do I check the status of my project in PCTS?

All projects that undergo Section 7 consultation with NMFS are entered into PCTS at <https://pcts.nmfs.noaa.gov/> within a few days of receipt by PRD. For U.S. Army Corps of Engineers (USACE) projects, the easiest and quickest way to look up a project’s status, or review completed ESA/EFH consultations, is to click on either the “Corps Permit Query” link (top left); or, below it, click the “Find the status of a consultation based on the Corps Permit number” link in the golden “I Want To...” window. Then, from the “Corps District Office” list pick the appropriate USACE district. In the “Corps Permit #” box, type in the 9-digit USACE permit number identifier, with no hyphens or letters. Simply enter the year and the permit number, joined together, using preceding zeros if necessary after the year to obtain the necessary 9-digit (no more, no less) number. For example, the USACE Jacksonville District’s issued permit number SAJ-2013-0235 (LP-CMW) must be typed in as 201300235 for PCTS to run a proper search and provide complete and accurate results. For querying permit applications submitted for ESA/EFH consultation by other USACE districts, the procedure is the same. For example, an inquiry on Mobile District’s permit SAM201301412 is entered as 201301412 after

Figure 27-3 National Marine Fisheries Service Memorandum for Distribution (Page 2 of 3)

selecting the Mobile District from the “Corps District Office” list. PCTS questions should be directed to Eric Hawk at Eric.Hawk@noaa.gov or (727) 551-5773.

If you have any questions regarding the Section 7 process or our new consultation submittal process, please contact our office at (727) 824-5312 or by e-mail at nmfs.ser.esa.consultations@noaa.gov. Thank you for your continued cooperation in the conservation of listed species.

Sincerely,



David M. Bernhart
Assistant Regional Administrator
for Protected Resources

File: 1514.22.A

**Figure 27-3 National Marine Fisheries Service Memorandum
for Distribution (Page 3 of 3)**

United States Fish and Wildlife Service (USFWS)

Vero Beach

[FDOT Districts 6, 4, 1, 5 (Osceola Co. only)]

Field Supervisor
South Florida Ecological Services Field Office
1339 20th Street
Vero Beach, FL 32960
Phone: (772) 562-3909
Fax: (772) 562-4288
<http://verobeach.fws.gov/>

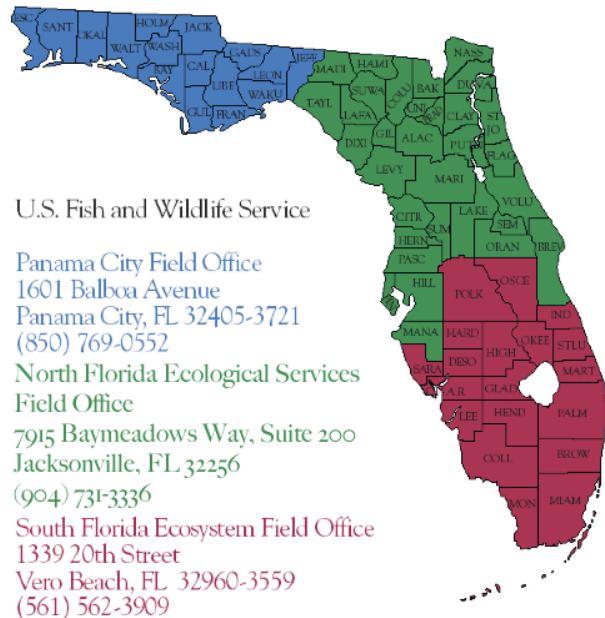
Panama City (FDOT District 3)

Field Supervisor
Panama City Ecological Services Field Office
1601 Balboa Avenue
Panama City, FL 32405
Phone: (850) 769-0552
Fax: (850) 763-2177
<http://panamacity.fws.gov>

Jacksonville

[FDOT Districts 2, 5, 7, 1 (Manatee Co. only)]

Field Supervisor
North Florida Ecological Services Field Office
7915 Baymeadows Way, Suite 200
Jacksonville, FL 32256
Phone: (904) 731-3336
Fax: (904) 731-3045
<http://northflorida.fws.gov/>



National Marine Fisheries Service (NMFS)

Please notify your NMFS Environmental Technical Advisory Team (ETAT) member of electronic submittal of Section 7 consultation request/packages:

Gulf Coast: (813) 727-5379
Atlantic Coast: (561) 249-1652
Habitat Conservation Division
National Marine Fisheries Service
263 13th Ave. South
St. Petersburg, FL 33701
Phone: (727) 824-5317 Fax: (727) 824-5300

Figure 27-4 Offices Responsible for “Section 7” Consultation

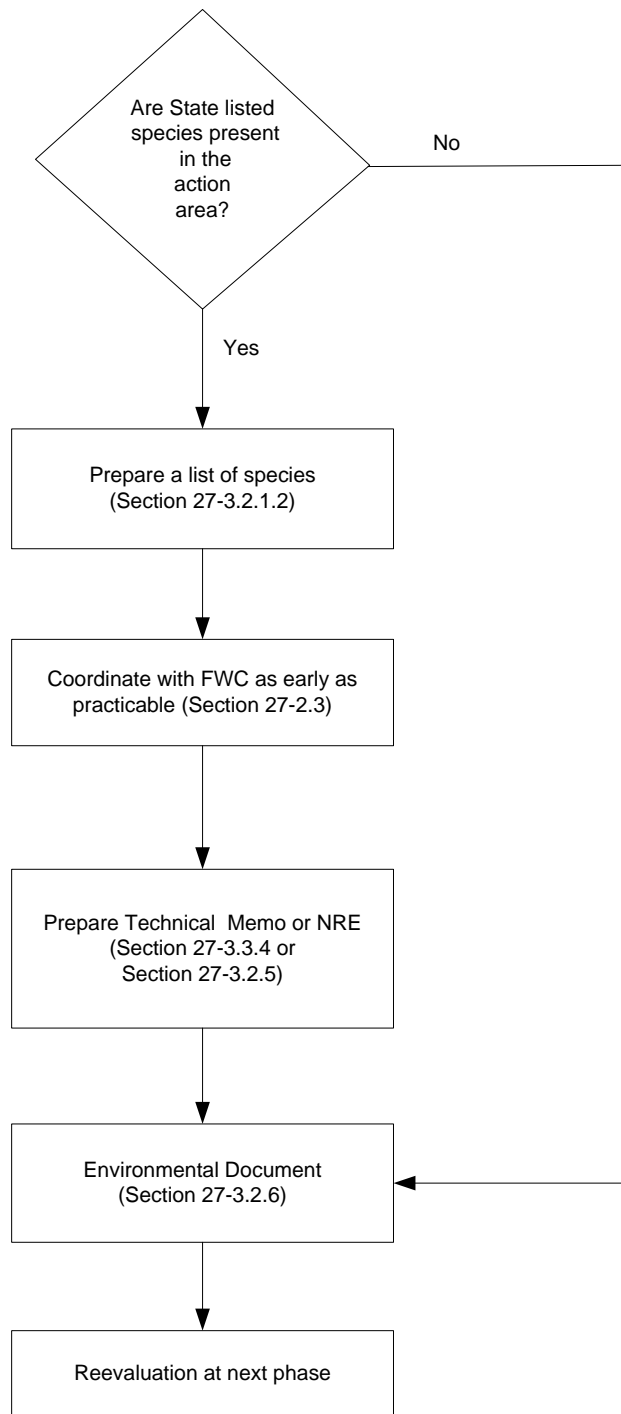


Figure 27-5 State Listed Species Process

Federally listed species information can be obtained from the following sources:

1) Terrestrial and freshwater species and critical habitat regulated by the United States Fish and Wildlife Service (USFWS)

- Species Lists and Recovery Plans available online at <http://www.fws.gov/endangered/species/recovery-plans.html>
- Federal lists by county:
 - USFWS Ecological Services Field Offices
 - Vero Beach - <http://verobeach.fws.gov/>
 - Panama City - <http://panamacity.fws.gov/>
 - Jacksonville - <http://northflorida.fws.gov/>
 - Contact the applicable USFWS Field Office directly (Figure 27.4) Also available online at: <http://www.fws.gov/endangered/index.html>
- Information, planning, and conservation (IPaC) decision support system at <http://ecos.fws.gov/ipac/>

2) Information on listed marine and anadromous species regulated by the National Oceanographic and Atmospheric Administration, National Marine Fisheries Service (NOAA/NMFS)

- Florida specific list at http://sero.nmfs.noaa.gov/protected_resources/section_7/threatened_endangered/index.html
- Contact NMFS directly (Figure 27.4)
- NMFS Section 7 checklist and accompanying Section 7 checklist procedure at http://sero.nmfs.noaa.gov/protected_resources/section_7/consultation_submittal/index.html
- The following NMFS website provides Action Agency Consultation Package links which contain the guidance for submitting an ESA Section 7 consultation request, effects determination guidance, species and critical habitat lists, consultation tracking in the Public Consultation Tracking System (PCTS), observer lists, emergency consultations, frequently requested biological opinions, and ESA policies, guidance, and regulations: http://sero.nmfs.noaa.gov/protected_resources/section_7/

Figure 27-6 Listed Species Information Sources

State listed species lists and additional information can be obtained from the following sources:

- 1) Animal species regulated by **Florida Fish and Wildlife Conservation Commission (FWC)**
 - Contact the FWC for most up to date species lists and species action plans. Regional office contact information available at: <http://myfwc.com/about/inside-fwc#DOs>
 - Published lists- see **Florida's Endangered and Threatened Species**, Available online at: http://myfwc.com/media/1515251/threatened_endangered_species.pdf
 - View an overview of the FWC's conservation model at: <http://myfwc.com/wildlifehabitats/imperiled>
 - Check current listed species profile information on FWC's website: <http://www.myfwc.com/wildlifehabitats/imperiled/profiles/>

- 2) Plant species regulated by the **Florida Department of Agriculture & Consumer Services (FDACS)**
 - **Regulated Plant Index FAC Ch5B-40.0055** is available online at: https://www.flrules.org/gateway/notice_Files.asp?ID=987089
 - The **Florida Statewide Endangered and Threatened Plant Conservation Program**, administered via the Florida Forest Service, has information at: http://www.floridastateforestservice.com/forest_management/plant_conservation_index.html
 - University of South Florida Herbarium website has distribution maps of rare plants in their Atlas of Florida Vascular Plants at: <http://www.plantatlas.usf.edu>

- 3) Species lists by County are available from **Florida Natural Areas Inventory (FNAI)**
 - County Lists (**County Occurrence Summaries**) online at <http://www.fnai.org/trackinglist.cfm>
 - Species and Natural Community Summaries

The following are links to BA templates that may be used to prepare the Listed Species and Habitat section of the NRE:

FHWA: <http://www.environment.fhwa.dot.gov/esawebtool/Site/Template.aspx>

USFWS: www.fws.gov/endangered/esa-library/pdf/attachment-4.pdf

USFWS Pacific Islands: www.fws.gov/pacificislands/publications/templateforba-be.doc

Figure 27-6 Listed Species Information Sources (Page 2 of 5)

NMFS:

<http://www.fpir.noaa.gov/Library/PRD/ESA%20Consultation/Final%20Action%20Agency%20Consultation%20Package%20Files%20for%20website%201-12-09/Template%20for%20BA-BE%20-%201-12-09.pdf>

The multi-agency forest management manual provides comprehensive and useful information for preparing Biological Assessments. :

http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0C_CwQFjAA&url=http%3A%2F%2Fwww.blm.gov%2Ffor%2Fesa%2Freports%2FAnalytical_Process_110504.doc&ei=Ze_OUr5Ga3LsQSlwYH4Cw&usq=AFQjCNHIF0GUC_5XUcwO7FkXt-u-8cKllg&bvm=bv.59026428,d.eW0

The following organizations/agencies can be contacted for further species specific information, expert interviews, habitat or GIS data:

Florida Department of Transportation (FDOT)

- Ecological staff at both the District and Central Office levels are experts with specific ecological and transportation experience. Often it is possible to find someone who has dealt with similar projects. Similarly, other states have expert environmental staff which may have similar experience.
- The publication, ***Florida Land Use, Cover and Forms Classification System (FLUCFCS) Handbook. 1999. Dept. of Transportation Surveying and Mapping. Thematic Mapping Section*** can be used to determine land use and existing habitat. It is downloadable at <http://www.dot.state.fl.us/surveyingandmapping/documentsandpubs/flucmanual1999.pdf>

Florida Fish and Wildlife Conservation Commission (FWC)

620 South Meridian Street
Tallahassee, FL 32399
(850) 488-4676

- Profiles and data for imperiled species available at: <http://myfwc.com/wildlifehabitats/imperiled/>
- General information for FWC GIS resources available at: <http://myfwc.com/research/gis/>
- GIS data for terrestrial resources and listed species: <http://ocean.floridamarine.org/CSA/Ancillary/Terrestrial.htm>
- GIS data available for marine listed species and resources: http://ocean.floridamarine.org/mrgis/Description_Layers_Marine.htm
- GIS data available for freshwater and tidal stream habitats: <http://ocean.floridamarine.org/CSA/Ancillary/Freshwater.htm>

Figure 27-6 Listed Species Information Sources (Page 3 of 5)

FWC's Wildlife Research Laboratory
1105 S.W. Williston Road
Gainesville, FL 32601
Phone: 386-758-0525

<http://myfwc.com/research/about/programs/wildlife/>

- A staff of wildlife biologists specializing in wildlife ecology, some with specific transportation-related experience, conduct wildlife research from this facility. Contact individuals for wildlife expertise.

Florida Natural Areas Inventory (FNAI)

1018 Thomasville Road, Suite 200-C
Tallahassee, FL 32303
(850) 224-8207

<http://www.fnai.org/>

- A diverse group of experts that are inventorying Florida's remaining natural areas and wildlife that can be contacted for ecological expertise
- Information available from FNAI includes species lists by county (**County Occurrence Summaries**), descriptions of natural community types (**Natural Communities Inventory**), GIS shapefiles of rare plants, animals, and habitat locations (**Element occurrences**), and information on Florida Managed Areas
- Many of these data can be downloaded from their website at <http://www.fnai.org/gisdata.cfm>
- Available Publications

Florida Water Management Districts

<http://www.dep.state.fl.us/secretary/watman/>

- Regional Florida Water Management Districts or Counties may have **Florida Land Use Cover and Forms Classification System (FLUCFCS)** data layers available in GIS shapefiles

United States Department of Agriculture (USDA)

Natural Resources Conservation Service (NRCS)
State Conservationist
2614 NW 43rd Street P.O. Box 141510
Gainesville, FL 32614
(352) 338-9500

- Online soil maps and data available via the NRCS Web Soil Survey website at: <http://websoilsurvey.sc.egov.usda.gov/app/HomePage.htm>
- Hard copies of **NRCS county soil surveys** are listed at : <http://www.nrcs.usda.gov/wps/portal/nrcs/surveylist/soils/survey/state/?stateId=FL>

Figure 27-6 Listed Species Information Sources (Page 4 of 5)

United States Fish and Wildlife Service (USFWS)

Southeast Region
Division of Endangered Species
1875 Century Blvd., Suite 200
Atlanta, GA 30345

<http://www.fws.gov/endangered/>

<http://endangered.fws.gov/>

- Jacksonville ES Office contacts: <http://www.fws.gov/northflorida/Staff3.htm>
- Vero Beach ES office contacts: <http://www.fws.gov/verobeach/StaffDirectory.html>
- Panama City ES Office contacts: <http://www.fws.gov/panamacity/stafflist.html>

USFWS's National Wetlands Inventory

- GIS data layers for **National Wetlands Inventory (NWI)** are available at:
<http://www.fws.gov/wetlands/>

Universities

- Several State Universities have faculty specializing in different areas of biological and ecological sciences: Florida State University (FSU) Biological Sciences and Marine Sciences departments
- The University of Florida (UF) - Wildlife Ecology program:
http://edis.ifas.ufl.edu/TOPIC/Threatened_and_Endangered_Species

Other Online Data and Information Sources

- Nature Serve: <http://www.natureserve.org/>
- Linking Florida's Natural Heritage Database: <http://palmm.fcla.edu/feol/>

Figure 27-6 Listed Species Information Sources (Page 5 of 5)

(Date)

Contractor (Address)

SUBJECT : New Borrow Pit / Mixture Plant /
Construction Field Office (Name of off-site activity)
Financial Management Number : XXXXXXXX
Federal-Aid Project Number : XXXXX-XXXX
Section _____, Township _____, Range _____
_____ County, Florida

Mr./Ms. _____:

A field survey was conducted in accordance with Article 7-1.4 of the Florida Department of Transportation Standard Specifications for Road and Bridge Construction and in compliance with the Endangered Species Act of 1973 (amended 1978) and other Wildlife Regulations. No listed species were observed within close proximity of the proposed activities.

It is the opinion of this office that there will be no adverse impacts to federal or state protected, threatened or endangered species. You may proceed without further action from this office. However, if any federal or state protected, threatened or endangered species are encountered during the course of the activities, please contact our office.

If you have any questions concerning our comments, please do not hesitate to contact us.

Sincerely,

Name
District Environmental Office
Engineer/Manager

cc :
Construction Project Administrator
District Materials Engineer
Resident Engineer

Figure 27-7 Sample Letter to Contractor on Species Survey

In Reply Refer To:
FWS/R4/ES

Dear Federal Agencies Affected by Hurricane Katrina Response and Cleanup:

Until further notice, the Fish and Wildlife Service will consider all hurricane related Federal activities in counties and parishes in Presidentially-declared disaster areas to be disaster related (see attached maps). Section 7(p) of the Endangered Species Act (ESA) and the emergency consultation provisions of the regulations that implement the ESA (50 CFR Section 402) will be used.

Section 7 Consultation Under the Endangered Species Act

Within the declared disaster areas, section 7(p) of the ESA should be interpreted to mean that restoring any infrastructure damaged or lost due to the hurricane back into the original footprint **does not require ESA consultation** with the Service.

For storm related activities outside of the declared disaster areas, Federal agencies should use the emergency consultation procedures covered in 50 CFR section 402 and in Chapter 8 of the Service's section 7 Handbook. These guidelines indicate that agencies should contact the Service by phone, the Service should offer recommendations verbally to minimize the effects of the emergency response action on listed species or their critical habitat, and the Service should follow up with written correspondence to the action agency documenting the conversation. The guidelines indicate clearly that the Service should not stand in the way of response efforts. After the emergency is under control, the action agency initiates formal consultation if listed species were adversely affected.

Compliance with the National Historic Preservation Act

For your information and convenience, we are also including here some information regarding compliance with the National Historic Preservation Act (NHPA). The regulations to follow for compliance with section 106 of the NHPA in a disaster declaration are found at 36 CFR 800.12. The following points should be considered in working with these regulations in a disaster situation:

Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provision of section 106 (36 CFR 800.12 (b)(2)(d)).

The following emergency procedures apply within 30 days of the declaration of an emergency (36 CFR.800.12 (b)(2)(d)):

Figure 27-8 Hurricane Katrina Response Letter

Agency officials and staff should contact their regional office to coordinate with their agency Preservation Officers or cultural resources staff; your agency may have a formal agreement on how to handle emergency situations for compliance with section 106 the NHPA, and can give the specific advice you will need for your agency in this recovery effort.

If your agency does not have a existing agreement or its own cultural resources staff, and has no existing agreement on how to carry out section 106 compliance in a emergency situation, follow the procedures given in 36 CFR 800.12 (b) (1) (2). These regulations require the Federal official to request comment from the State Historic Preservation Officer (SHPO), and with the Indian Tribes that may have an interest in your project area. You may contact the State Historic Preservation Office in each state for questions about specific undertakings, or general advice on compliance in this situation; they are the office that works with Federal agencies on a routine basis to assure compliance with the NHPA, and are charged with assisting the public and Federal agencies in preserving historic and cultural resources.

We suggest that you contact the appropriate SHPO for your state:

Alabama: Stacye Hathorn, Section Head, Review and Compliance: 334-230-2649

Florida: Laura Kammerer, Review and Compliance: 850-245-6333 or 1-800-847-7278

Mississippi: Department of Archives and History, 601-576-6940

Louisiana: Division of Historic Preservation, 225-342-8160

If you cannot reach the SHPO in your state, or you have other questions, you may contact us at the number below and we will be happy to assist you in finding answers to your questions.

Single, Regional Point of Contact for Questions

To facilitate and streamline our service to other agencies during the response to Hurricane Katrina, we have designated a Service regional point of contact for all inquiries related to ESA section 7 consultation, NHPA, and National Environmental Policy Act (NEPA) compliance questions. Joe Johnston and Kenneth Graham of the Ecological Services Division will serve as this point of contact. They can be reached at 1-877-485-2235, or at Joe_Johnston@fws.gov or Kenneth_Graham@fws.gov.

If you have any questions about these issues, please contact me at 404-679-4000 or Noreen Walsh, Assistant Regional Director, Ecological Services, at 404-679-7085.

Sam D. Hamilton
Regional Director
Southeast Region

Figure 27-8 Hurricane Katrina Response Letter (Page 2 of 2)



IN REPLY REFER TO:

United States Department of the Interior


FISH AND WILDLIFE SERVICE

Field Office
1601 Balboa Avenue
Panama City, FL 32405-3721

September 29, 2004

Memorandum

To: County and Regional Planning Staff

From: Janet Mizzi, Deputy Project Leader, Panama City, FL 

Subject: Beach Mouse - Post Hurricane Ivan

In the aftermath of Hurricane Ivan, questions have arisen about rebuilding activities in affected areas and compliance with the Endangered Species Act (ESA). Special interest has been directed to possible conflicts between reconstruction projects and endangered beach mice (including Perdido Key, Choctawhatchee, and St. Andrew beach mice) or other imperiled species.

The U.S. Fish and Wildlife Service (Service) has determined that demolition and reconstruction of damaged/destroyed structures should not result in "take" of beach mice if these activities **1) take place within the confines of the pre-storm structure, 2) are completed before dune habitat reclaims the pre-storm structure site, and 3) will not negatively impact dune habitat.** In these situations, it will not be necessary for affected persons to contact the Service or otherwise obtain authorization under section 10 of the ESA before beginning the demolition-reconstruction process.

Attached is guidance for the conservation of beach mice during road repair, debris removal, and reconstruction of damaged property. Please note that these are emergency provisions developed in response to the damage caused by Hurricane Ivan and may be modified as conditions change. Again, these emergency provisions only apply to demolition and reconstruction of damaged/destroyed structures within the confines of the pre-storm structure footprint. Please distribute the attachments to your building permit, road maintenance, and planning departments.

Affected persons should be aware that they are still responsible for obtaining required Federal and State permits if a "take" will occur. People desiring to build new structures, reconstructing damaged/destroyed structures that will include impacting areas outside the confines of the pre-storm structure, or in situations other than those described above, should continue to contact the Service to determine if a section 10 Incidental Take Permit would be necessary. If you are not certain if a permit would be necessary for your demolition and/or reconstruction activities, please contact this office for assistance.

The Service has coordinated this information with the Florida Fish and Wildlife Conservation Commission. The above determination is consistent with the permitting regulations for State Endangered Species. If you have questions regarding state permitting regulations, please contact Karen Lamonte at 850/265-3676.

We are providing similar notifications to Federal agencies. If you have any questions concerning our position on these issues, please contact us at 850/769-0552. For beach related assistance, please contact Janet Mizzi at extension 247. For other areas, please contact Gail Carmody at extension 225.

Attachments

Figure 27-9 Example of Emergency Consultation

Interim Guidance for Post-Ivan Property Stabilization and Reconstruction of Damaged/Destroyed Structures In Areas with Endangered Beach Mice & Other Imperiled Species

U.S. Fish and Wildlife Service

Effective Sept.-Oct. 2004

These guidelines are intended to facilitate emergency structure repair and clean-up post Hurricane Ivan. They do not apply to the construction of new facilities or the expansion of existing structures.

Demolition and reconstruction of damaged/destroyed structures should not result in "take" of beach mice if these activities (1) take place within the confines of the pre-storm structure, (2) are completed before dune habitat reclaims the pre-storm structure site, and (3) will not negatively impact dune habitat.

Persons desiring to build new structures, reconstruct damaged/destroyed structures that will include impacting areas outside the confines of the pre-storm structure, or in situations other than those described above should contact the U.S. Fish & Wildlife Service to determine if Section 10 Incidental Take Permits would be necessary.

All activities should follow the guidance provided in the following document: Florida Department of Environmental Protection Emergency Authorization for Repairs, Replacement, Restoration, and Certain Other Measures Made Necessary by Hurricane Ivan OGC No. 04-1625.

Emergency Cleanup, Debris Removal, and Property Stabilization Activities

- No debris should be buried in place, but should be removed from beaches and dune areas.
- Equipment access to beaches should be limited to pre-Ivan designated beach access ' points. All measures should be taken to avoid impacts, to dune habitats. Avoid driving or operating heavy equipment in dune habitat. Any necessary use of pre-existing pathways or heavily degraded areas for access should be clearly marked. The U.S. Fish and Wildlife Service (USFWS) or Florida Fish and Wildlife Conservation Commission (FWC) should be contacted immediately if there are questions regarding identification of, appropriate beach access points.
- Staging/storage areas should be identified for cleanup and debris removal activities and should be located outside of existing/remaining beach mouse habitat or public park properties. The USFWS or FWC should be contacted immediately if there are questions regarding identification of appropriate staging areas.
- Parking areas should be identified for cleanup crews and should be located outside of existing/remaining beach mouse habitat or public park properties. The USFWS or FWC should be contacted immediately if there are questions regarding identification of appropriate parking areas.

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Figure 27-9 Example of Emergency Consultation (Page 2 of 4)

- No fill material (i.e., sand) should be deposited on or removed from existing/remaining beach mouse habitat. Fill material must be free of debris, rocks, clay, or other foreign matter and should be similar in color and grain size to pre-storm beach sand.
- No sand should be bulldozed, dredged, or removed from seaward of the mean high water line (MHW) or Coastal Construction Control Line (CCCL) without authorization.

Reconstruction of Damaged/Destroyed Structures within Pre-storm Structure Footprint Activities

The following guidelines are in addition to those listed above for Emergency Clean-up, Debris Removal, and Property Stabilization. Both sets of guidelines apply to Reconstruction Activities.

- Keep reconstruction footprints (i.e., building, parking, ancillary structures, and other amenities) to pre-Ivan footprints.
- Use silt fencing to designate construction areas and keep all equipment and activities inside these areas.
- All trash should be disposed of properly in covered trash receptacles.
- Maintain all non-developed areas within the development in their natural condition. Landscape using only native dune vegetation; turf grass and/or sod should not be used.
- For areas impacted by construction, restore all habitats to their natural configuration and vegetation.
- Install "sea turtle friendly" lighting, glass, and window fixtures that reduce the direct and ambient lighting of dune habitats within and adjacent to the project site.
- Beach access over dunes should be limited to as few access points as possible and should consist of boardwalks, which should be built with top down construction where possible.

Contact Information

U.S. Fish & Wildlife Service (USFWS) - Ms. Janet Mizzi (850) 769-0552
FL Fish & Wildlife Conservation Commission - Ms. Karen Lamonte (850) 265-3676

9/29/04

Figure 27-9 Example of Emergency Consultation (Page 3 of 4)

Interim Guidance for Post-Ivan Road Construction and Maintenance In Areas with Endangered Beach Mice & Other Imperiled Species

U.S. Fish and Wildlife Service

Effective Sept.-Oct. 2004

These guidelines are intended to facilitate emergency road repair and clean-up post Hurricane Ivan. They do not apply to the construction of new roads or the expansion of existing roads.

Emergency Clean-up and Road Repair Activities

All construction should occur within or as close as possible to the footprint of the original road.

- Staging/storage areas should be identified for construction activities and should be located outside of existing/remaining beach mouse habitat or public park properties. The U.S. Fish and Wildlife Service (USFWS) or Florida Fish and Wildlife Conservation Commission (FWC) should be contacted immediately if there are questions regarding identification of appropriate staging areas.
- Parking areas should be identified for construction crews and should be located outside of existing/remaining beach mouse habitat or public park properties. The USFWS or FWC should be contacted immediately if there are questions regarding identification of appropriate parking areas.
- No clay materials should be used in construction, unless approved by the USFWS or FWC.
- No fill material should be deposited on or removed from existing/remaining beach mouse habitat. Fill material and hay bales must be clean of noxious weeds. No fertilizer or lime will be applied.
- Road shoulders should be stabilized only with native vegetation; turf grass and/or sod should not be used.
- All trash should be disposed of properly in covered trash receptacles.
- If aggregate material is needed for shoulder stabilization along the pavement edge, crushed oyster shell is the preferred material. If crushed shell is unavailable, White Bahama Rock is an acceptable material.
- Aggregate material should be placed no further than 3 feet from the pavement.

Contact Information

U.S. Fish & Wildlife Service (USFWS) - Ms. Janet Mizzi (850) 769-0552
FL Fish & Wildlife Conservation Commission (FWC) - Ms. Karen Lamonte (850) 265-3676

9/29/04

Figure 27-9 Example of Emergency Consultation (Page 4 of 4)