



Florida Department of Transportation

RON DESANTIS
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

JARED W. PERDUE, P.E.
SECRETARY

March 27, 2026

Mr. Larry Williams
State Supervisor for Ecological Services
U.S. Fish and Wildlife Service
1601 Balboa Avenue
Panama City, Florida 32405-3721

Subject: Process for Phased ESA Consultation for FDOT Projects

Dear Mr. Williams:

The Florida Department of Transportation (FDOT), pursuant to 23 United States Code (U.S.C.) 327 and the implementing Memorandum of Understanding (MOU) executed on May 26, 2022, has assumed Federal Highway Administration (FHWA) responsibilities under the National Environmental Policy Act (NEPA) for highway projects on the State Highway System (SHS) and Local Agency Program (LAP) projects off the SHS. In general, FDOT's assumption includes all highway projects in Florida whose source of federal funding comes from FHWA, or which constitutes a federal action through FHWA (e.g., projects on the interstate system). NEPA Assignment includes the responsibility for environmental review and interagency consultation pursuant to Section 7(a)(2) of the Endangered Species Act (ESA) as it pertains to the review and approval of NEPA documents for transportation projects. If federally listed species or critical habitat have the potential to be within the action area and could be impacted by the project, then consultation with the US Fish and Wildlife Service (USFWS) may be necessary. When consultation is required between FDOT and USFWS, it is documented with a letter of concurrence or a biological opinion (BO) from the USFWS to track the consultation between agencies. FDOT strives to complete consultation prior to NEPA approval, however, project details needed to assess impacts are not always available at this stage in project development.

Historically, the time required for NEPA analysis varied widely and often would span several years, especially for complex projects requiring the preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The Fiscal Responsibility Act (FRA) of 2023 enacted legislation that formalized deadlines to expedite the environmental review process for federal projects. Under the new rules, an

EA must be completed within one year from the date FDOT determines an EA is required and an EIS must be completed within two years from the date a Notice of Intent is issued. FDOT has updated its Project Development & Environment (PD&E) manual as of July 13, 2024, to implement procedures to comply with these new statutory requirements. Any project exceeding the required time frames are reported to Congress. In addition, Section 334.63, Fla. Stat., was revised during the 2025 legislative session to include a provision for PD&E studies for new alignment and capacity improvement projects to be completed within 18 months to the maximum extent possible. FDOT has also enacted a new Project Development Policy (January 7, 2026) aiming to ensure timely project completion.

These new requirements are meant to accelerate project delivery by setting a clear, shorter deadline for transportation projects while reducing associated costs. One of the main challenges in meeting these metrics is the need to conduct full species surveys, following USFWS established species specific protocols, during the PD&E phase. Conducting species specific surveys during this phase of project development is not always effective or prudent. Frequently, necessary details of the project's development are yet to be determined, making it difficult to identify the full extent of the anticipated impacts within the action area. Species surveys also often have specific seasonal constraints on when they can be conducted and the length of time the survey findings remain valid. Development of transportation projects can extend for several years as each phase is completed and may undergo design changes during this time. Surveys that have been conducted during the PD&E phase are commonly not representative of the project's final design due to design refinements, changes in project area environmental conditions, and/or land use changes over time. Therefore, surveys completed during PD&E often do not accurately reflect rare species occurrences as species move and cause populations to fluctuate in response to changes in land use. Species may also be added to or removed from the ESA list in the time it takes for a project to move forward. This snapshot in time of the project area surveyed during the PD&E phase becomes less accurate as time passes and surveys frequently need to be repeated to reflect current conditions. For the reasons mentioned, species surveys conducted during PD&E have limited value and would be more meaningful if conducted during the design phase when the project impacts are finalized.

It has been the intention of FDOT to complete consultation prior to the approval of NEPA documents when possible. In some instances, when there hasn't been sufficient information for USFWS to complete consultation, FDOT documents the status of consultation with USFWS in the NEPA document and commits to completing consultation when complete information is available. FDOT staff have met with USFWS to discuss how best to approach this situation since it is anticipated that accelerated project delivery requirements will cause this to occur more frequently, leaving consultation unfinished during the NEPA review. When suitable habitat occurs within the project footprint, FDOT must make a determination of effect on all species that could potentially occupy that area and be impacted by the project. In some instances, a species survey is needed to show the presence or absence of a species within the project area. For those species with specific USFWS survey protocols in place, the survey is conducted to support the effect determinations. Until demonstrated by a survey, an effect determination for these species is assumed to be a May Affect, likely to Adversely

Affect (MALAA) if suitable habitat exists within the project area. An effect determination of MALAA would require a BO, which in many cases would not be the correct effect determination if full survey work were conducted. The USFWS has not been providing partial concurrence letters; therefore, all effect determinations must be made to receive concurrence. Requesting BOs for projects where full species surveys will be delayed leads to an assumed presence and a MALAA determination. The need for a BO creates a considerable time delay for project delivery and a heavy work demand on the USFWS, especially when site conditions and initial survey work indicate that a BO will most likely not be needed. In these situations, the project schedule can be the determining factor for the species affect determination and not the actual determined presence of the species. The majority of roadway projects occur within existing ROW or require additional ROW adjacent to the existing road corridor leaving few options for minimization considerations. However, for projects where new alignments are proposed, FDOT would consult with USFWS regarding timing of species survey as survey results could inform minimization considerations. Considering these factors, FDOT is proposing a phased approach in determining species impacts while providing USFWS with reasonable assurance that no alteration to site conditions will occur prior to conducting the full survey work required for the project. Specifically, FDOT proposes to employ the following usage, *terms-of-art*, to distinguish the graduated levels of surveys, as appropriate.

Phase I – This is an initial desktop-based survey of conditions using GIS mapping of known and relevant environmental conditions (LULC, FLUCS, soils, wetlands, connectivity, consultation areas, etc.) compared to the Florida Natural Areas Inventory (FNAI) and the USFWS Information for Planning and Consultation (IPaC) species list and natural community distributions. When overlaid with the initial project corridor or alternatives, this comparison provides an initial basis to assess whether a species (1) occurs or has potential to occur, and (2) how a proposed project could affect existing conditions, and how a project could be designed to avoid or minimize species and habitats. This Phase I desktop survey can be updated, re-assessed, and/or consulted upon at meaningful intervals during the PD&E phase, as well as during permitting and prior to construction.

Phase II – This phase will be conducted during the PD&E phase and is the initial field reconnaissance or ground-truthing of the desktop analysis. This phase can also provide insights for identifying any additional relevant features not represented in Phase I. Phase II will be used to assess habitat quality, record observations of wildlife and wildlife usage, identify considerations for refining field survey plans prior to implementation, such as flagging important habitats before the survey season for a target species, or identifying potential nest/roost trees for estimating survey intensity. Qualified biologists will make assessments on the likelihood of species presence and consider the level of potential impacts to the habitat that will occur due to the project.

Information collected during Phase I and II will be compiled and presented in the Natural Resource Evaluation (NRE) document created for consultation with USFWS, in accordance with Part 2, Chapter 16 of the FDOT's PD&E Manual. Species effect determinations will be made and detailed justifications based on site evidence will be presented to support the

determinations. In situations where species specific surveys are required, FDOT will make the predicted effect determination based on the available site evidence collected up to that point in the project's development. A commitment to conduct the applicable full species-specific surveys prior to any work being performed at the site will be made in the NRE document and in the final NEPA Environmental Document. FDOT proposes to use the following commitment language:

Based on coordination with the U.S. Fish and Wildlife 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 U.S. Fish and Wildlife 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 re-evaluations.

It will be during this phase that FDOT will request review and a written response from the USFWS to indicate consultation on the project has been initiated and will continue into the next phase of project delivery. The letter from USFWS will serve as reasonable assurance that the requirements of the ESA under 23 CFR§ 771.133 will be met prior to construction. Delaying full species-specific surveys until the design phase, to support permitting, will provide the USFWS with the most current species information and allow for more focused conservation methodologies to prevent harm to rare species.

Phase III – During Phase III, survey work that could not be completed during PD&E will be conducted by qualified biologists following the full USFWS species-specific field survey methodologies and reporting protocols. Surveys will be conducted to provide the results necessary for the USFWS to concur with a final effect determination for the relevant species and their critical habitat (if applicable). All necessary outstanding information will be provided to the USFWS during this phase of project delivery to complete consultation. The consultation document may be in the form of a final concurrence letter or BO as appropriate based on the final effect determinations.


This phased approach does not change USFWS's regulatory review authorized under the ESA, but instead, clarifies how FDOT will integrate field surveys for endangered species into the accelerated PD&E project schedule. FDOT's intention is to obtain agreement from USFWS on *when* to conduct final, definitive species-specific surveys to provide the most accurate information, and to avoid having to repeat multiple species surveys during project delivery. Once the project enters the design phase, project details are refined and species surveys can be conducted that more accurately reflect the current conditions within the full extent of the anticipated action area. The FWS will still have input at each step during the ETDM process.

Conducting full species-specific surveys during Phase III will increase efficiency for both agencies by providing the most accurate information at the appropriate time for consultation, while also allowing projects to proceed forward and meet new statutory requirements.

FDOT respectfully requests a reply confirming USFWS concurrence on this phased approach to ESA consultation. Thank you for your continued partnership in streamlining transportation project reviews.

If you have any questions, please contact Denise Rach at the FDOT Office of Environmental Management at Denise.Rach@dot.state.fl.us or at (850) 414-5250.

Sincerely,

Signed by:

493FA39532D74A4...
Katasha Gruver
Director, Office of Environmental Management

cc:

USFWS, Panama City, FL (Gianfranco Basili, Mark Cantrell, Jose Rivera, Amber Rhodes)
USFWS North Florida Field Office, Jacksonville, FL (Zakia Williams)