Chapter 10
Table of Contents

Section .......................................................... Page

10.1  EVALUATION AND CONSULTATION PROCEDURES ........................................... 10.2

Activity No. 1:  Evaluate Project for Presence of Protected Species/Habitat..... 10.3
Activity No. 2:  Assess Effects on Protected Species/Habitat ....................... 10.3
Activity No. 3:  Prepare Biological Assessment, If Applicable .......................... 10.4
Activity No. 4:  Initiate Formal Consultation with the USFWS ....................... 10.5
Activity No. 5:  Review Construction Documents for Mitigation Commitments .. 10.5
Activity No. 6:  Monitor Construction ................................................................. 10.5

Figure .......................................................... Page

10-A  —  THREATENED AND ENDANGERED SPECIES EVALUATION ............... 10.2
Chapter 10
THREATENED AND ENDANGERED SPECIES

10.1 EVALUATION AND CONSULTATION PROCEDURES

The process for evaluating threatened and endangered species issues is depicted in Figure 10-A.

1. Evaluate Project for Presence of Protected Species/Habitat

2. Assess Effects on Protected Species/Habitat

3. Prepare Biological Assessment, If Applicable

4. Initiate Formal Consultation with USFWS

5. Review ContractDocuments for Mitigation Commitments

6. Monitor Construction
ACTIVITY NO. 1: Evaluate Project for Presence of Protected Species/Habitat

The Environmental Services Division will conduct an evaluation of the project area to determine whether listed or proposed species or designated or proposed critical habitat is present. NDOT Staff Biologist will obtain a species list from Nevada Natural Heritage Program. The level of evaluation will be appropriate to the scope of the project and will include requesting from the US Fish and Wildlife Service (USFWS) information regarding listed or proposed species and designated or proposed critical habitat in the project area, conducting field surveys, and review of substantiated information from other credible sources. Other sources of information may include:

- US Forest Service,
- National Park Service,
- Bureau of Land Management, and
- Nevada Department of Wildlife.

If there are no protected species or habitat in the project area the requirements of Section 7 of the *Endangered Species Act* are satisfied. The results of this coordination will be included in the environmental documentation for the project.

Regulations and Guidance:

50 CFR 424 “Listing endangered and threatened species and designating critical habitat”
FHWA Environmental Guidebook – “Water, Wetlands, and Wildlife”
FHWA Technical Advisory T6640.8A – October 1987

ACTIVITY NO. 2: Assess Effects on Protected Species/Habitat

If listed or proposed species or designated or proposed critical habitat occur in the project area, the Environmental Services Division will conduct an evaluation of the potential impacts to determine whether any protected species or critical habitat are likely to be adversely affected by the project. Informal consultation with the USFWS, in cooperation with the FHWA, will be undertaken as a part of the evaluation to:

- clarify whether and, if so, what listed or proposed species or designated or proposed critical habitats are in the project area;
- determine what effect the action would have on these species or critical habitats;
- explore ways to modify the project to reduce or remove adverse effects on the species or critical habitats; and
- determine the need to enter into formal consultation for listed species or designated critical habitats.
If the initial assessment of effects results in a determination that the proposed project will not affect listed or proposed species or designated or proposed critical habitat, the Section 7 requirements are satisfied, and further consultation is not required.

If the initial assessment of effects results in a determination that the project may affect protected species or critical habitat, further consultation with the USFWS will be necessary and the Environmental Services Division will prepare a biological assessment.

Regulations and Guidance:

50 CFR 402.13 “Informal Consultation”
AASHTO Practitioner’s Handbook 17, Complying with Section 7 of the Endangered Species Act for Transportation Projects – November 2016

ACTIVITY NO. 3: Prepare Biological Assessment, If Applicable

The purpose of the biological assessment is to evaluate the potential effects of the project on listed and proposed species and designated and proposed critical habitat and determine whether formal consultation is necessary. The biological assessment will include the following:

- results of an on-site inspection and data-gathering to determine if listed or proposed species or designated or proposed habitat are present;
- review of the literature;
- analysis of the effects of the action on the species and habitat, including consideration of cumulative effects and the results of any related studies; and
- analysis of alternative actions considered for the proposed action.

The biological assessment or an appended action to programmatic biological opinion (PBO) will be submitted to the USFWS within 180 days and 45, respectively, of receipt of a species list from the USFWS or USFWS concurrence in a species list submitted by the Environmental Services Division unless a different period of time is agreed to by the USFWS and the FHWA. The Environmental Services Division will submit the completed biological assessment or the PBO appended action to the FHWA for forwarding to the USFWS. The USFWS will respond in writing within 30 days as to whether it concurs with the findings of the biological assessment.

If preparation of a biological assessment results in a determination that the proposed action will have no effect or is not likely to adversely affect any listed or proposed species or designated or proposed critical habitat, and if the USFWS concurs with the determination, formal consultation is not required, and the Section 7 requirements are satisfied and no further consultation is required.

If preparation of a biological assessment results in a determination that the proposed action is likely to adversely affect listed or proposed species or designated or proposed critical habitat, formal consultation (for listed species or designated critical habitat) will be required.
Regulations and Guidance:

50 CFR 402.12 “Biological Assessment”
FHWA Environmental Guidebook – Wildlife and Habitat
FHWA Technical Advisory T 6640.8A – October 1987
FHWA Environmental Guidebook – Endangered Species Act (ESA) Webtool

ACTIVITY NO. 4: Initiate Formal Consultation with the USFWS

If it is determined that the project is likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of any designated critical habitat, the Environmental Services Division, in cooperation with the FHWA, will initiate formal consultation with the USFWS. Formal consultation will result in issuance of a biological opinion and, as applicable, an incidental take statement by the USFWS.

See Section 2.3 “Preparing an Administrative Record.”

Regulations and Guidance:

50 CFR 402.14 “Formal Consultation”
FHWA Environmental Guidebook – “Water, Wetlands, and Wildlife”
FHWA Technical Advisory T6640.8A – October 1987
AASHTO Practitioner’s Handbook 17, Complying with Section 7 of the Endangered Species Act for Transportation Projects – November 2016

ACTIVITY NO. 5: Review Construction Documents for Mitigation Commitments

The Environmental Services Division will coordinate with the Project Management Team to ensure that avoidance, minimization and mitigation measures for addressing the project’s impacts on protected species and habitat are reflected in the Construction Contract Documents. The Environmental Services Division, in coordination with the Stormwater Division as applicable, will ensure the construction documents address the terms and conditions of the biological opinion.

ACTIVITY NO. 6: Monitor Construction

For projects involving formal consultation, NDOT must report on the progress of the project and its impact on the species and critical habitat. The information will be used to amend, as appropriate, the biological opinion, reasonable and prudent alternatives (RPAs), reasonable and prudent measures (RPMs), terms and conditions, and to make necessary adjustments to the baseline. Project monitoring is designed to do the following:
• detect adverse effects resulting from the proposed action,
• detect when the level of anticipated incidental take is approached,
• raise a red flag if the level of anticipated incidental take is exceeded, and
• determine the effectiveness of RPMs.

NDOT will submit a monitoring report, as specified in the biological opinion, to the USFWS (through the FHWA). The monitoring report is a summary of the activities taken place on the specific project in the biological opinion. The report also discusses compliance issues and the number of protected species handled, observed, injured, or killed during the project.

Regulations and Guidance:

50 CFR 402.14(i)(3) "Incidental Take Permit"