

Standard Local Operating Procedures for Endangered Species  
The Process

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USFWS South Florida Ecological Services Office

The Fish and Wildlife Service (Service) in consultation with the Corps of Engineers (Corps) is developing procedures for improving coordination on projects that may affect listed species or critical habitats designated under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). The intent of the Standard Local Operating Procedures for Endangered Species (SLOPES) is to provide the Corps with a stepwise process to assist in determining if a proposed action affects listed species or critical habitats, what are the effects the action has on listed species or critical habitats, and options available to avoid or minimize the action's effects to listed species or critical habitats. Because mitigation for project effects to listed species or critical habitats is not an authorized action under section 7 of the ESA, modifications to the Federal action are usually proposed, which if implemented, provide the Service with reasonable assurance that "take" of listed species or "adverse modification" of critical habitat has been reduced to the maximum practicable extent, i.e., the Federal action can be completed as authorized by Federal law, or that "take" or "adverse modification" is not expected to occur.

The following discussion provides a sequential guide through the SLOPES process. At each junction in the guide, a decision point is provided to assist the user in determining the effect to listed species or critical habitats and the next course of action. Figure 1 provides a schematic flowchart representation of the sequential guide.

The first step in evaluating potential effects to listed species or critical habitats is to determine which county the project is located in. The Service has prepared a list of federally threatened and endangered species and critical habitats present in each of Florida's counties. The Service has also prepared a companion list of suitable habitat types for each of the species. Suitable habitats are those that are capable of providing the basic physical and biological parameters necessary for survival of the listed species. The Service also maintains a database of species occurrence records that may be queried for site-specific species occurrences. The database is a

compilation of data received from several sources and is periodically updated. Listed species may be present in suitable habitats even if no known locations are identified in our database.

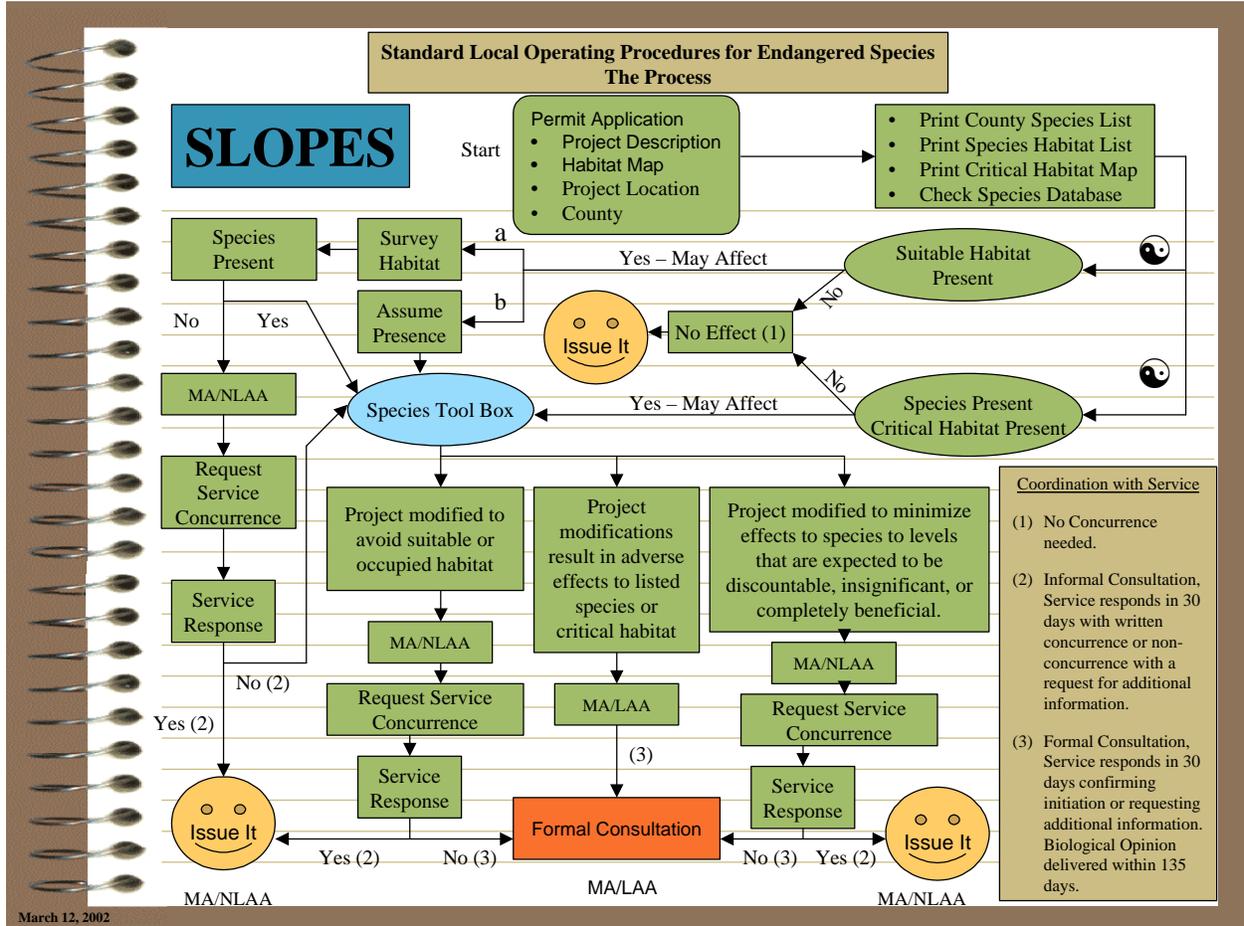


Figure 1 Schematic representation of the sequential guide.

The Service has synthesized data on species occurrence, suitable habitat, and historical range information into a consultation area map to help simplify the process of determining when a consultation with the Service is necessary. If a project falls within the consultation area and a suitable habitat is present then a "may affect" determination can be assumed and the process can proceed to the on-site survey.

In order to determine the likelihood of listed species presence, this list of species and suitable habitats are compared to those communities present on the project site. The Service also

recommended that for small projects, i.e., less than four ha (10 ac), the vegetative communities in the surrounding properties also be mapped. For the Service's evaluations, the surrounding properties are those within a radius of 0.8 km (0.5 1/2-mi) of the project site boundaries. Habitat characterization for the surrounding properties is necessary because several species, including red-cockaded woodpeckers, scrub-jays, eagles, etc., inhabit territories that encompass large tracts of lands.

The Service prefers habitat descriptions that mimic those provided in the "South Florida Multi-Species Recovery Plan" (Service 1999), which is available on the Service's web site at <http://verobeach.fws.gov>. The "Florida Land Use, Cover and Forms Classification System, Third Edition" (FLUCCS) is the preferred habitat classification (FDOT 1999). Providing the FLUCCS code in describing the project habitats helps expedite review of impacts to listed species.

The intent of the habitat descriptions is to provide the Corps and Service with the habitat types present on the project site and in the project area. The communities can be mapped on aerial photographs, topographic maps, or other GIS maps. A companion text narrative of the community descriptions is required.

If a project falls within the consultation area and suitable habitats are present then a may affect determination is made and a site survey is necessary.

In the SLOPES flowchart, a comparison of the species list by county, suitable habitats, species occurrence records, and consultation maps to the project site habitat maps provides a yes/no option at this point. The Service has synthesized the best available scientific data on species occurrence, suitable habitats, and historical range into a consultation area map for many listed species to simplify the process of determining when a consultation with the Service is necessary. If a project falls outside the consultation areas for listed species then a "no effect" determination can be made and other permitting actions can proceed.

If the habitat descriptions for the project and the project area do not identify suitable habitats for listed species, then the Corps could make the determination, as the action agency, that

the project will have "no effect" on listed species or critical habitat and can proceed with other permit actions. If desired, the Corps can request a concurrence letter from the Service.

The concurrence request should include the project description, the listed species present in the county, the habitat types where these species are usually found, the project area habitat map, and the text descriptions of these habitats. The letter should also include the Corps determination and the reason for the determination, i.e., no suitable habitats present on the project site. Upon receipt of the concurrence request and the supporting habitat data, the Service could provide concurrence with the "no effect" determination.

In the SLOPES flowchart, the yes option that suitable habitats for listed species is present, listed species are known to be present on the property, or critical habitat is present, guides the Corps to the determination that the proposed action "may affect" listed species and additional consultation is warranted.

The "may affect" decision concludes with either a "may affect, not likely to adversely affect" determination or a "may affect, likely to adversely affect" determination (adverse effects are likely to occur). The same options are available for designated "critical habitat," i.e., "not likely to adversely modify" or "likely to adversely modify." For the most part, the Service includes beneficial effects in the "not likely to adversely affect" category under informal consultation.

The "may affect, not likely to adversely affect" determination is reached after the supporting data leads to the conclusion that the effects of the action are expected to be discountable, insignificant, or completely beneficial. Insignificant effects relate to the magnitude of the impact and should never reach the scale where "take" occurs. Discountable effects are those that are 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.

The "may affect, likely to adversely affect" determination triggers the need for formal consultation and concludes with the Service's "Biological Opinion." The Biological Opinion includes the Service's evaluation of the proposed action on the listed

species and determines if the action will jeopardize the continued existence of the species. For non-jeopardy opinions, the Biological Opinion includes the amount of "incidental take" that may result from the action and the reasonable and prudent measures and terms and conditions the Service believes are necessary to minimize the amount of "incidental take." For jeopardy opinions, the Biological Opinion also identifies reasonable and prudent alternatives, if any, that the Service believes will avoid jeopardizing the species.

The Service assumes that suitable habitats within the historical range still supports listed species. In the SLOPES flowchart, two options are available to assess suitable habitat issues. The first option (option a) provides for the use of species-specific surveys of the property to determine the presence or absence of listed species in suitable habitats. The second option (option b) assumes that suitable habitats supports listed species. In option a, species-specific surveys have been developed by the Service or have been adopted from other resource agencies and are available for many listed species. The species-specific survey protocols are the minimum levels of effort the Service believes are necessary to determine the presence or absence of the listed species on the project and in the project area. Suitable habitats on the property may not be the nesting/denning sites of the species in question, but could be part of the foraging habitat, which is considered by the Service as occupied, because the habitat fulfills part of the species life history needs.

If the species-specific survey protocols do not detect the presence of listed species, then a "may affect, not likely to adversely affect" determination may be reached. To receive concurrence with this determination from the Service, supporting data documenting the level of survey effort in suitable habitats must be provided as well as the data needs discussed previously for the "no effects" concurrence request.

Upon receipt of the request and the supporting data, the Service will review the analysis and may provide concurrence with the "may affect, not likely to adversely affect" determination. The supporting documentation needs to include all components of the data identified in each of the survey protocols (i.e., data sheets, transect lines, weather conditions, duration and time of surveys, etc.). However, if the species-specific surveys detect

the presence of listed species, then a "may affect" determination is appropriate and the Corps is directed to the "Species Tool Box."

For the suitable habitat scenario, the second option (option b) allows the Corps to assume that suitable habitats supports listed species and directs the procedure to the Species Tool Box. The SLOPES flowchart also provides direction for projects where listed species presence is known and/or critical habitat is present. In these situations, the procedure is again directed to the Species Tool Box.

### Species Tool Box

The Species Tool Box is a series of species-specific fact sheets, report content guides, survey protocols, species assessment guides, and monitoring protocols that the Service believes will assist the Corps in minimizing adverse effects to listed species and adverse modifications to critical habitat. In many situations, the recommendations in the guides and protocols, if incorporated into the proposed Federal action, may allow the Corps to determine that the project "may affect, but is not likely to adversely affect" the species or "adversely modify" critical habitat.

As an example of how the Species Tool Box should work, take for instance a project that has a listed species present on the site and the project proposes to impact the occupied habitat. The Species Tool Box provides a recommendation to modify the project to avoid impacting the occupied habitat. The incorporation of this recommendation into the project would allow the Corps to make the determination that the project "may affect, but is not likely to adversely affect" listed species and request concurrence from the Service. Upon receipt of the concurrence request and the supporting data, the Service could provide concurrence with the Corps "may affect, not likely to adversely affect" determination.

Another example of the use of the Species Tool Box is in a project that has a listed species present on the site and the project proposes to impact the occupied habitat. However, surveys of the habitat have noted that the habitat has been physically altered by exotic species invasion, lack of fire, or other anthropogenic actions. These alterations have produced

on-site habitat conditions resulting in marginally suitable habitat for the survival and propagation of the listed species. Through project redesign, the planned action has avoided impacting a substantial portion of the listed species habitat, however some habitat loss will still occur. The project proposes on-site habitat enhancements and management actions that provide habitat quality improvements, which balance losses of small amounts of marginally suitable habitat. Because of the habitat improvements proposed, the potential for adverse effects of the action are expected to be discountable, insignificant, or completely beneficial and would allow the Corps to make the determination that the project "may affect, but is not likely to adversely affect" listed species and request concurrence from the Service. Upon receipt of the concurrence request and the supporting data, the Service could provide concurrence with the "may affect, but is not likely to adversely affect" determination. The supporting data needs to include documentation of habitat preservation, conservation easements or reservations in the deeds, and a monitoring program of the success of the enhancement actions.

The last example for the use of the Species Tool Box provides the scenario where the recommendations assist the Corps in developing alternative actions and modifications to the proposed action minimizing adverse effects to listed species or critical habitats. In this instance, "take" of a listed species or "adverse modification" of critical habitat will still occur and formal consultation with the Service is required. The "Species Tool Box" in this situation is an integral component in minimizing adverse effects from the proposed action.

When a request is received for formal consultation, the Service will provide within 30 days, acknowledgment that formal consultation has begun or that the Service believes that additional data are needed before formal consultation can begin. Formal consultation concludes 90 days following receipt of the initial request or following receipt of the additional data. An integral part of the initial data submittal is an analysis of how the action may affect listed species. This analysis needs to also include an estimation of the extent of take. The Biological Opinion is completed within 45 days following conclusion of formal consultation. The additional data, as defined in 50 CFR 402.14(c), is the best scientific or commercial data available that would assist the Service in

formulating its Biological Opinion and is not to be a request for a special research project.

To assist in the preparation of the "may affect" analysis for listed species, the Service has prepared an analysis guideline as part of the Species Tool Box. The guideline also includes the typical data needs, which the Service believes are necessary to prepare the Biological Opinion. In projects where take occurs and the take will not jeopardize the continued existence of the species, the Biological Opinion will include an "Incidental Take Statement" quantifying the amount of take for the project and the non-discretionary reasonable and prudent measures and terms and conditions that are necessary to minimize take. The terms and conditions will also include monitoring and reporting requirements necessary to document the Federal action and its effects on listed species. The completion of the Biological Opinion concludes the formal consultation for the Federal agency action.

In general, the process described above is also applicable to critical habitat designations. In Florida, critical habitats have been designated for eight species in 50 CFR 17.95. See individual species accounts for boundaries.

#### References

Florida Department of Transportation (FDOT). 1999. Florida Land Use, Cover and Forms Classification System Handbook. Department of Transportation, Surveying and Mapping, Geographic Mapping Section. Third Edition.

U.S. Fish and Wildlife Service (Service). 1999. South Florida multi-species recovery plan. Atlanta, Georgia. 2172 pp.  
<http://verobeach.fws.gov/Programs/Recovery/vbms5.html>