

SECTION 2.6

PERMITS/CODES ADMINISTERED BY USFWS

2.61 Introduction and Definitions

The United States Fish and Wildlife Service (USFWS) is the federal agency which provides expertise regarding a project's potential impact on federally listed Threatened or Endangered species. The Endangered Species Act of 1973 mandates that other federal agencies must consult with the USFWS on any action which the agencies might authorize, fund or carry-out.

2.62 Description

The Endangered Species Act (16 U.S.C. 1539)

Under the authority of the Endangered Species Act (Act), USFWS must determine whether or not a project will adversely affect a Threatened or Endangered (T/E) species. As stated above, the Act also requires other federal agencies to consult with the USFWS regarding impacts to T/E species when those agencies are involved in a project. Section 7 of the Act contains the formal consultation process. It should be noted that if another federal agency is involved as a project planner, designer, funder or authorization grantor, the project review is handled through that federal agency. With any Drainage Improvement Project that involves Section 404 of the Clean Water Act permitting, the USFWS will generally provide comments to the U.S. Army Corps of Engineers. Section 10 of the Endangered Species Act contains a separate permit procedure for the "taking" of a T/E species when a federal agency will not be involved in a project.

The term "take" is a key concept in the Endangered Species Act. It is generally defined to include almost any act adversely affecting a species, including harassing, harming, pursuing, hunting, capturing, or collecting a listed animal.

2.63 Criteria to Determine Need for a Permit

For any Drainage Improvement Project that will also be reviewed by the COE, a separate permit from the USFWS is not required. Review of the project by USFWS will be initiated and coordinated by COE. If a project will not involve review by COE either for an Individual or General Permit, the USFWS should be contacted to determine if a separate Take Permit is required.

The presence of certain T/E species has been documented or is strongly suspected along several streams in Indiana. A listing of these streams and the T/E species are provided in Appendix "H.2". This appendix also contains a listing of T/E habitats associated with waterways and certain species.

2.64 Pre-Application Consultation/Early Coordination Process

Early coordination with USFWS is strongly encouraged before beginning any drainage improvement project. Staff are available for on-site meetings to discuss possible impacts to T/E species, their habitat and measures that can be undertaken to minimize or avoid the impacts.

2.65 Application/Permit Requirements

For projects involving another federal agency, such as the COE, USFWS is notified of a proposed project by that federal agency. A separate notification/application by the applicant to USFWS is not required.

If a project will affect a listed species but will not involve another federal agency, such as the COE, an individual Take Permit must be processed. The USFWS should be contacted so that the agency can determine whether the project will affect a listed species and whether such a permit is needed. In addition to completing an application form, the applicant must submit to the USFWS a Habitat Conservation Plan which must outline measures that will be implemented to minimize and mitigate the anticipated "take". The Habitat Conservation Plan must also detail measures to monitor the impacts on the affected species, ensure funding will be available for implementing the Plan, and address unforeseen circumstances. An application form for the USFWS Take Permit is provided in Appendix "H.1".

2.66 Overview of the Application Review Process by the Agency

For projects that will affect a listed species but will involve another federal agency, such as the COE, USFWS will provide the federal agency a Biological Opinion detailing the impacts of the project on the affected species. If USFWS concludes that a project will "jeopardize the continued survival of the species", the Biological Opinion may include alternatives, developed with the federal agency and the applicant, that will avoid the impacts to the species. If USFWS determines that the project will not "jeopardize" any species but still incidentally result in "take", the Biological Opinion will include measures to minimize the "take" and also provide an "incidental take statement".

For processing of an individual Take Permit, the application and Habitat Conservation Plan are published in the Federal Register. Action is taken on the application after closure of the public comment period and review of the submitted material by USFWS.

2.67 Procedures for Timely Access to USFWS Regulatory Personnel

The USFWS operates two offices in Indiana, a main office in Bloomington and an additional field office in Warsaw. Appendix "H.3" lists the addresses of these offices.