

Biological Assessments

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What is the Purpose of this talk?

- What is a Biological Assessment?
- How do we know when a Biological Assessment is needed?
- Why do we prepare Biological Assessments?
- What information is contained within a Biological Assessment
- What is garnered from Biological Assessments?



What is a Biological Assessment?

- Biological Assessments (BA) may serve multiple purposes, but the primary role is to document an agency's conclusions and the rationale to support those conclusions regarding the effects of their proposed actions on protected resources.
- agency = FHWA
- proposed action = complete project description
- protected resources = Threatened & Endangered Species protected under the Endangered Species Act.



How do we know when a BA is needed?

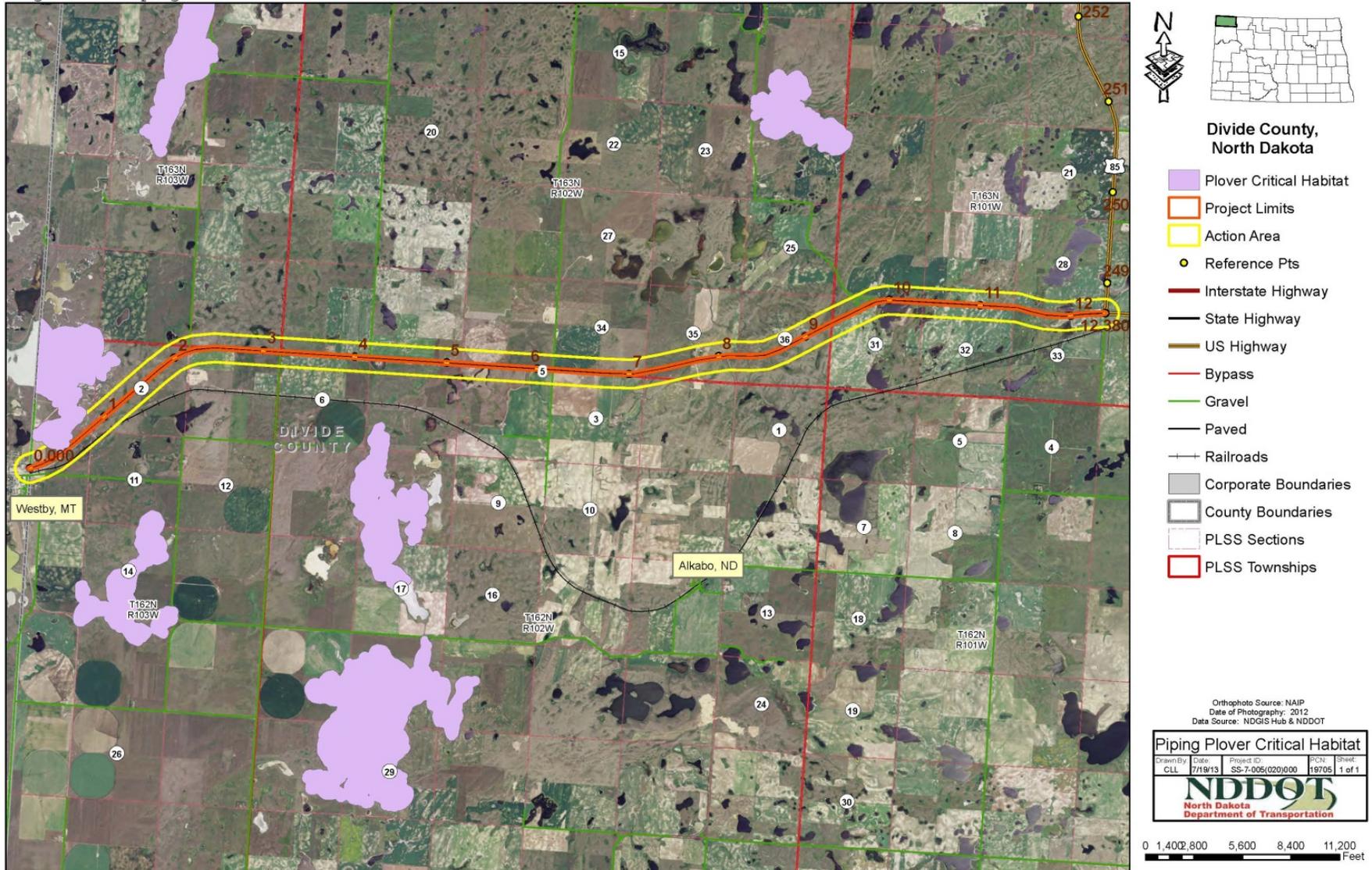
- Compliance with Endangered Species Act.
- ESA is an impact category to be evaluated under NEPA
- Design Manual II-02.05.04 gives procedures of how to work through consultation process.
- Work through “***NDDOT SECTION 7 ESA GUIDANCE***”

Section 7 Affect Determination Package

NDDOT Threatened, Endangered, Proposed, Candidate Species and Critical Habitat Affect Determination Table							
Project:		PCN:	Location:	County:			
Species	Listing	Guidance	FHWA Review Required?		Determination		Additional Documentation Included
			Yes	No	Not Present	No Effect	
Interior Least Tern	E	FHWA Review required for work in or along the shoreline of the Missouri River System including reservoirs from April 15 through August 1.					
Whooping Crane	E	FHWA Review required for work involving above ground utilities or towers, or new guy wires unless lines are buried.					
Black-footed Ferret	E	FHWA Review required for ground disturbing activities within 100 feet of prairie dog towns of at least 80 acres in size. Projects within the existing right-of-way will not require FHWA review.					
Pallid Sturgeon	E	FHWA Review required for work in or along the shoreline of the Missouri River (including reservoirs) and Yellowstone River Systems.					
Gray Wolf	E	Listed West of US 83; Delisted East of US 83					
Poweshiek Skipperling	E	FHWA Review required for work occurring outside of the right of way in undisturbed native tall grass prairie and wet swales					
Piping Plover	T	FHWA Review required for ground disturbing activities within ½ mile of designated piping plover critical habitat or known nesting sites. See link for piping plover designated critical habitat maps: http://www.fws.gov/mountain-prairie/species/birds/pipingplover/					
Western Prairie Fringed Orchid	T	FHWA Review required for all ground disturbing activities on non-flooded, undisturbed ground, known habitat, and native prairie. High probability of species in or near the Sheyenne National Grassland.					
Dakota Skipper	T	FHWA Review required for work occurring outside of the right of way in high quality native prairie containing a high diversity of wildflowers and grasses.					
Northern Long-Eared Bat	P	FHWA Review required for work involving the removal of trees or buildings, ground disturbance in areas with caves, mines, and rock crevices, or work on structures. See NLEB Guidance for NDDOT Projects for further assistance.					
Rufa Red Knot	P	FHWA Review required for work activities impacting Piping Plover Critical Habitat or sewage lagoons. See link for piping plover designated critical habitat maps: http://www.fws.gov/mountain-prairie/species/birds/pipingplover/					
Greater Sage Grouse	C	FHWA Review Required for work activities occurring outside the right of way in native sagebrush grasslands where big sagebrush (<i>Artemisia tridentata</i>) is present.					
Sprague's Pipit	C	FHWA Review Required for work activities occurring outside the right of way in large native short-to-mixed grass prairie patches of approximately 72 acres or greater.					
Piping Plover Critical Habitat	D	FHWA Review required for ground disturbing activities within ½ mile of designated piping plover critical habitat or known nesting sites. See link for piping plover designated critical habitat maps: http://www.fws.gov/mountain-prairie/species/birds/pipingplover/					
Poweshiek Skipperling Critical Habitat	P	FHWA Review required for ground disturbing activities within 0.6 mile of proposed Poweshiek Skipperling critical habitat. See link for Poweshiek Skipperling proposed critical habitat maps: https://www.fws.gov/midwest/endangered/insects/posk/poskPropCHMapUnitsND_SD.html					
Dakota Skipper Critical Habitat	P	FHWA Review required for ground disturbing activities within 0.6 mile of proposed Dakota Skipper critical habitat. See link for Dakota Skipper proposed critical habitat maps: http://www.fws.gov/midwest/endangered/insects/dask/CHmaps/daskNDCHmaps.pdf					

Listing Key: E – Endangered T – Threatened P – Proposed C – Candidate D – Designated Critical Habitat

Figure 8B: Piping Plover Critical Habitat near Action Area



NDDOT Section 7 ESA Guidance

Piping Plover	T	<p>FHWA Review required for ground disturbing activities within ½ mile of designated piping plover critical habitat or known nesting sites. See link for piping plover designated critical habitat maps:</p> <p>http://www.fws.gov/mountain-prairie/species/birds/pipingplover/</p>
Piping Plover Critical Habitat	D	<p>FHWA Review required for ground disturbing activities within ½ mile of designated piping plover critical habitat or known nesting sites. See link for piping plover designated critical habitat maps:</p> <p>http://www.fws.gov/mountain-prairie/species/birds/pipingplover/</p>

How do we know? – cont.

Can NDDOT say No Effect based on Guidance Document?

Can FHWA say No Effect based on package?

Is there an uncertainty if affects will occur?

Is there known T&E species or habitat in the project?

BIOLOGICAL ASSESSMENT

HOT BITUMINOUS OVERLAY WITH SLIVER GRADING

Project No.

SS-7-005(020)000

PCN

19705

State Line East to West Junction US 85 - Fortuna



Prepared by
NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

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23 USC § 409
NDDOT Reserves All Objections

Interagency Cooperation

Authority - Endangered Species Act of 1973, 16
USC 1536

Regulations—Interagency Cooperation
50 CFR 402

Policy - ESA Section 2(c)(1)

“... Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.”



ESA Section 7

Provisions for Interagency Cooperation

7(a)(1) Affirmative Conservation Mandate

Federal agencies shall use their authorities to carry out programs for the conservation of threatened and endangered species.

7(a)(2) In consultation with the Secretary, Federal agencies shall insure that any action it authorizes, funds, or carries out will not jeopardize the continued existence of threatened or endangered species. . .

7(c) Federal agencies shall request species lists for proposed actions and carry out biological assessments identifying whether any threatened or endangered species or critical habitat may be adversely affected



ESA Section 7(a)(2)

Informal Consultation

A voluntary* process that includes discussion, correspondence, site inspections, draft document review, and any coordination between the action agency and Services

*voluntary in that formal consultation may be requested without previous coordination



ESA Section 7(a)(2)

Informal Consultation—Purposes

1. Identify potential effects of an action
2. Identify opportunities to avoid and reduce effects
3. Explore opportunities to benefit species or critical habitat
4. Determine whether formal consultation is needed



ESA Section 7(a)(2)

Informal Consultation—Potential Outcomes

1. Avoidance of all impacts (no effect); no consultation required
2. Determination of “May affect, not likely to adversely affect” and written concurrence by the Service
 - Effects are discountable, insignificant, or completely beneficial
3. Determination of “May affect, likely to adversely affect” initiation of formal consultation and a biological opinion



ESA Section 9

- This section of the Endangered Species Act prohibits the taking of endangered species of fish and wildlife.
- Take = to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct.
- Harass is defined by FWS 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.
- Harm is further defined by FWS 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.



Biological Assessments

- Describe the Project
 - Detailed description of the action
 - Who, What, When, Where, Why, and How
 - Include any proposed species conservation measures as part of the project description
- Evaluate species occurrence in the action area
 - Action area: The area to be affected directly or indirectly by the proposed action and not merely the immediate area involved in the action
 - Determine whether a species and its habitat will be exposed to the stressors associated with the action



Biological Assessments

- Effects Analysis (Effects = Exposure + Response)
 - Exposure – which organisms and habitats will be affected by the components of the proposed action
 - Response – what happens when the organisms and habitat are affected by the components of the proposed action
- Use the best scientific and commercial data available
- Identify direct, indirect, and cumulative effects
- Consider the effects of interdependent and interrelated actions
 - Interdependent actions - actions having no independent utility apart from the proposed action
 - Interrelated actions - actions that are part of a larger action and depend on the larger action for their justification
- Connect the dots (Effects -> Determination)



Biological Assessments

- The bottom line:
 - a well written, well supported effects determination can protect species while streamlining the project approval and implementation process
- The best way to help us help you is to begin thinking about how to incorporate species conservation into your projects as early in the project development process as possible