



UNITED STATES DEPARTMENT OF COMMERCE
National Telecommunications and
Information Administration
Washington, D.C. 20230

MEMORANDUM FOR: *Internet for All* (IFA) Grant Recipients and U.S. Fish and Wildlife Service Field Offices

FROM: Jill Springer, Senior Policy Advisor on Permitting
Chief Environmental Review and Permitting Officer

SUBJECT: Authorization of IFA Grant Recipients to Serve as Non-Federal Representatives for Section 7 Consultation

EFFECTIVE: October 28, 2024

Pursuant to 50 C.F.R § 402.08 and in accordance with the special award conditions for the *Internet for All* grant awards administered by the National Telecommunications Information Administration (NTIA) and the General Terms and Conditions for the Broadband Equity, Access & Deployment (BEAD) Program, NTIA has formally designated all recipients of NTIA broadband funding as non-federal representatives for purposes of Section 7 consultation. NTIA reserves the right to rescind this designation and retains ultimate responsibility for Section 7 obligations. *See* 47 C.F.R. §§ 1.308(b), 1.1312(b).

Under Section 7(a)(2) of the Endangered Species Act (ESA), NTIA is required to ensure that activities funded by broadband awards are not likely to jeopardize species listed on the Federal Lists of Endangered and Threatened Wildlife and Plants or result in the destruction or adverse modification of designated critical habitat.

The ESA Section 7 implementing regulations at 50 C.F.R. § 402.08 allow federal agencies to designate a non-federal representative (NFR) to conduct informal consultation. Accordingly, as a condition of NTIA's award, the recipient (and, if any, the recipient's designee(s) assisting with environmental compliance with respect to the award) will serve as an NFR pursuant to 50 C.F.R. § 402.08. As an NFR, the recipient of NTIA funding (and, if any, the recipient's designee(s) assisting with environmental compliance with respect to the award) agrees to carry out the responsibilities described in Paragraphs (1)-(3) below. The recipient also agrees to coordinate with OICG or its designated Environmental and Historic Preservation representative (NTIA EHP) agent assisting with ESA Section 7 compliance.

1. No Effect Determination: The NFR will evaluate its project (identified at an appropriate scale) to determine whether it will have any effect on ESA-listed species or their designated critical habitats.
 - a. NTIA and the U.S. Fish and Wildlife Service (FWS) have agreed that the activities listed in Appendix A will have no effect on listed species or designated critical habitats under FWS's jurisdiction. In addition, site-specific reviews may identify additional NTIA funded activities for which a "no effect" determination is appropriate. The NFR must provide documentation supporting its "no effect" finding to the NTIA EHP.



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- b. For actions beyond those listed in Appendix A, the NFR may request technical assistance from the FWS or the National Marine Fisheries Service (NMFS) (FWS and NMFS are both referred to in the Sections below as the "Service"). For ESA-listed species under FWS's jurisdiction, an Official Species List can be obtained online through FWS's "Information for Planning and Consultation" (IPaC) web application, located at: <https://ipac.ecosphere.fws.gov/>.¹ The NFR will submit documentation of a "no effect" determination to NTIA EHP where either:
- i. The NFR has used IPaC to generate an Official Species List from the Services indicating that neither the range of an ESA-listed species nor the designated critical habitat of an ESA-listed species is found within the respective project area (i.e., the "action area," as defined in the ESA Section 7 implementing regulations at 50 C.F.R. § 402.02); or
 - ii. The NFR determines the proposed project will have "no effect" on ESA-listed species or the designated critical habitats using an appropriate Determination Key in the FWS's IPaC system.

If NTIA EHP has not notified the NFR of any concerns with the NFR's no effect determination within 10 business days of receipt of the documentation in support of the determination, then the NFR, sub-recipient, or their contractors may consider ESA obligations complete for this project. However, if NTIA EHP notifies the NFR, in writing that it does not accept the "no effect" determination, as submitted, then the NFR may not begin any ground-moving activities related to this project until NTIA EHP provides written approval to begin such activities.

2. May Affect, Not Likely to Adversely Affect Determination: If an NFR makes a preliminary determination that a project may affect but is not likely to adversely affect ESA-listed species or designated critical habitat, the NFR must notify NTIA EHP.
- a. If the NFR determines the proposed project may affect but is not likely to adversely affect ESA-listed species or designated critical habitat under FWS's jurisdiction using an appropriate Determination Key in IPaC, the NFR will submit such documentation to NTIA EHP. If NTIA EHP has not notified the NFR of any concerns with the NFR's no effect determination within 10 business days of receipt of the documentation in support of the determination, then the NFR, sub-recipient, or their contractors may consider ESA obligations complete for with this project. However, if NTIA EHP notifies the NFR, in writing that it does not accept the "may affect, not likely to adversely affect" determination, then NTIA EHP may seek additional information as described in 2.b.
 - b. NTIA EHP may seek additional information from the NFR to submit a request for the Service's written concurrence that the project is not likely to adversely affect ESA-listed species or designated critical habitat. An NFR will provide additional information and further assistance to NTIA EHP in preparing this request for concurrence. If the appropriate Service concurs that the project is not likely to adversely affect ESA-listed species or designated critical habitat, formal consultation is not required, and ESA compliance is complete.

¹ Note that IPaC may not be used for ESA-listed species under NMFS jurisdiction without the written agreement of the agency and the approval of NTIA EHP.



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3. May Affect, Likely to Adversely Affect Determination and Formal Consultation: In some limited circumstances, formal consultation may be required. The ESA Section 7 implementing regulations do not provide for assignment of formal consultation responsibilities to an NFR. However, NFRs may assist in the development of a request for formal consultation with the appropriate Service.

If the Service does not concur the proposed project is not likely to adversely affect listed species or designated critical habitat, or an NFR finds the proposed project “may affect, likely to adversely affect” ESA-listed species or designated critical habitat, the recipient of the NTIA award, as an NFR, agrees to assist NTIA EHP in developing a consultation initiation package (containing the requisite information described at 50 C.F.R. § 402.14(c)) that NTIA EHP will submit to the appropriate Service in its request for formal consultation. For species or habitat under FWS’s jurisdiction, this includes using the Consultation Package Builder (CPB) in IPaC to generate an environmental review document, which may be used as the consultation initiation package.

If you have any questions regarding this Memorandum, please contact Amanda Pereira, Environmental Program Officer, at apereira@ntia.gov

Affirmed by *Douglas Kinkoph* Date 10/28/2024
Doug Kinkoph
Associate Administrator
Office of Internet Connectivity and Growth



APPENDIX A: *Broadband Deployment Activities Exempt from Endangered Species Act Consultation*
Section 7 Consultation

The National Telecommunications and Information Administration (NTIA) and the U.S. Fish and Wildlife Service (FWS) have conducted extensive interagency collaboration to address how NTIA will fulfill its compliance obligations under Section 7 of the Endangered Species Act (ESA) for its *Internet for All* (IFA) grant programs. The following is a list of activity types that NTIA has determined will have “no effect” on listed species or designated critical habitat, and therefore do not require Section 7 consultation, with conditions where appropriate. This list is not intended to be a definitive summary of the only types of activities that would have no effect on listed species or designated critical habitats; regional, statewide, or site-specific analyses may still conclude that other activities will have no effect.

Federal agencies must evaluate the potential effects of their actions, including any cumulative effects, on listed species and designated critical habitat in the action area. Depending on the outcome of a federal agency’s evaluation (i.e., effects determination), there are two pathways for the agency to meet its Section 7(a)(2) obligation: “no effect” and “may affect.”

“No effect” is the appropriate conclusion when a proposed federal action will not affect a listed species or designated critical habitat. Any effect, even wholly beneficial, insignificant, or discountable, precludes a determination of “no effect.” Federal agencies have the authority to make a “no effect” determination, but the decision should be documented to show: (1) the determination was made; and (2) the basis for that determination. FWS may provide technical assistance to the federal agency but will not concur with “no effect” determinations.

Grant-funded actions are subject to ESA compliance. However, NTIA, working with FWS, has identified the following list of activities that are allowable uses of grant funds and that will have no effect on listed species or designated critical habitats. Each activity is defined to provide clarity on its intended scope, and any conditions required for the activity to have “no effect” are stated below.

Activities	Conditions
<p>Broadband use and adoption/non-deployment activities are administrative or procurement-related activities to help expand high-speed Internet access and use. Examples include providing subsidized broadband service; planning; training; workforce development; capacity building; and equipment purchases (e.g., desktop computers, laptops, tablets, software, and mobile hotspots). These activities do not create any potential sources of disturbance or impacts, such as noise, emissions, or ground disturbance, and they do not have any potential to affect listed species or designated critical habitat.</p>	None
<p>Broadband deployment projects that include lighting up dark fiber (i.e., leasing installed but unused fiber), indefeasible right-of-use (IRU) agreements, installation of broadband equipment in existing racks or other interior spaces, and acquisition of facilities and telecommunications equipment do not have the potential</p>	None



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<p>to create any ground disturbance and do not create either temporary or permanent effects to land, air, or water, and therefore do not have the potential to affect listed species or designated critical habitat.</p>	
<p>Minor interior renovations to existing buildings would involve a range of activities such as moving or replacing walls, installing equipment, fixtures, and furnishings. It would take place entirely indoors with no ground disturbance or expansion of the building footprint.</p>	<p>This activity would have no effect on listed species or designated critical habitat when no listed species occupy any areas of the building where work would take place (e.g., birds or bats roosting in attics).</p>
<p>Installation of wireless access points on existing buildings would involve the attachment of small pieces of equipment, typically 6 – 8” square, which are wall mounted with a cable connection. If no external cable has already been installed, a small hole may need to be drilled in the building exterior to provide a connection, this can be completed by an individual technician with small hand tools. There is no ground disturbance associated with this activity.</p>	<p>This activity would have no effect on listed species or designated critical habitat when installation activities take place in areas where noise generated from installation does not exceed average ambient conditions.</p>
<p>Installing fiber optic cable in existing conduit can be completed either by pulling fiber or blowing fiber through existing conduit using a small, compressed air machine. The conduit is accessed through an existing handhole (a small concrete vault or electrical pull box, installed at the same time as the conduit, to be level with the ground) or manhole, with cable rolled off a spool, drum, or reel. There is no ground disturbance or vegetation management associated with this activity.</p>	<p>This activity would have no effect on listed species or designated critical habitat when done:</p> <ul style="list-style-type: none"> • outside the range of listed species and designated critical habitat, or • along existing roadways with equipment stationed either on a paved shoulder or where regular maintenance (e.g., mowing) occurs with no ESA-related seasonal restrictions on operations and maintenance activities, and the site is not adjacent to habitat occupied by listed species sensitive to lighting, visual disturbance, or sound.
<p>Attaching fiber optic cable to existing utility poles would be conducted by a crew using a bucket truck. A steel strand would be placed on existing poles and fiber optic cable is lashed to the strand with steel wire. There is no ground disturbance or vegetation management associated with this activity.</p>	<p>This activity would have no effect on listed species or designated critical habitat when done:</p> <ul style="list-style-type: none"> • outside the range of listed species and designated critical habitat, or • along existing roadways with equipment stationed either on a paved shoulder or where regular maintenance (e.g., mowing) occurs with no ESA-related seasonal restrictions on operations and maintenance activities, and the site is not adjacent to habitat occupied by listed species sensitive to lighting, visual disturbance, or sound.