NTIA's Guide to Streamlined Endangered Species Act (ESA) Compliance for Broadband Deployments

NTIA

Consultation and Permitting: ESA Section 7

Section 7 of the Endangered Species Act (ESA) requires Federal agencies to consult with the US Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS) to ensure that actions will not jeopardize the continued existence of any Federally-listed species or adversely modify designated critical habitats. Linear projects, like broadband, may cross multiple species areas, resulting in prolonged Section 7 consultations, especially if the resource agencies are understaffed.

✓ **Informal Consultation**
Informal consultation can help the action agency determine whether formal consultation is needed.

✓ **Review**
The Grant recipient **may initiate informal consultation** by **contacting the appropriate local Service office** to determine if listed species are present within the action area. Grant recipients may also use the Information for Planning and Consultation (IPaC) tool.

✓ **Determination**
If listed species are present, the grant recipient and NTIA must determine if the Proposed Action may affect them through a biological assessment or other biological review provided to USFWS for concurrence unless a Determination Key (DKey) is available.

✓ **Formal Consultation (If applicable)**
Formal consultation is required for proposed projects that may adversely affect listed species. It has specific timelines and responsibilities for both USFWS/NMFS and the proponents and concludes with the issuance of a biological opinion by the Services.

✓ **Biological Opinion (if applicable)**
The conclusion of the biological opinion will determine if the Proposed Action is likely or not likely to jeopardize the continued existence of listed species and/or result in the destruction or adverse modification of critical habitat.

NTIA must initiate "formal consultation" with USFWS on behalf of grantees when proposed projects may adversely affect protected species.

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Streamlined ESA Compliance Steps

NTIA has provided tools to assist grant recipients with ESA Section 7 reviews for broadband.

Step 1: Review NTIA's [Non-Federal Designation Memo](#) and "No Effect" List

This Memo explains Section 7 requirements and provides a [list of broadband activities exempt from ESA consultation](#) due to no potential to affect protected species and/or designated critical habitats.

Step 2: Conduct an Online IPaC Review

If a project does not fall on the "no-effect" list, grant recipients should consult [USFWS's Information for Planning & Consultation (IPaC)](#) to request a species list.* If no species are present, Section 7 obligations are complete.

Step 3: Access and Apply Determination Keys (DKeys) if available within IPaC

Even when species are present, broadband DKeys may support online effect determinations that can eliminate the need for USFWS staff consultation.*

Step 4: Provide NTIA with Section 7 Documentation

Grant recipients will provide NTIA with documentation of whether the project met ESA obligations through:
- The "no effect" list;
- No species identified through IPaC;
- A DKey determination. (See requirements in the [Non-Federal Designation Memo](#))

Note: IPaC is only used for USFWS listed species and does not cover species under the jurisdiction of the National Marine Fisheries Service (NMFS).

Consult NMFS for deployments that may impact marine species, including submarine and subsea cables.

Contact an Environmental Program Officer (EPO) on the consultation process for projects with potential to adversely affect protected species.

In limited instances, broadband projects may require formal Section 7 consultation.

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Step 1: Check the "No Effect" List

Grant recipients should refer to the list of activities that have "no effect" on species or designated critical habitats and therefore do not require FWS consultation.

SAMPLE OF "NO EFFECT" LIST ACTIVITIES

NTIA and FWS identified a list of activities that are allowable uses of grant funds and will have "no effect" on listed species or designated critical habitats, including the following:

Use and adoption activities that do not have potential for ground disturbance or environmental impacts

Deployment projects, installations, and renovations that do not have potential for ground disturbance

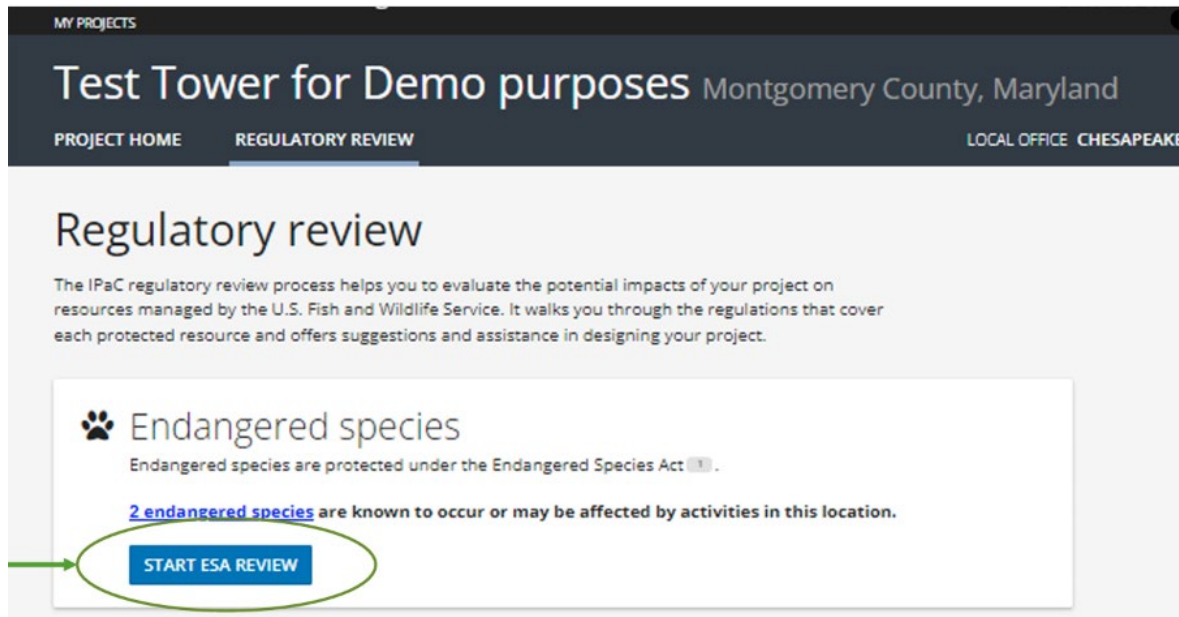Attaching fiber optic cable to existing utility poles without ground disturbance

Installing fiber optic cable in existing conduit without ground disturbance
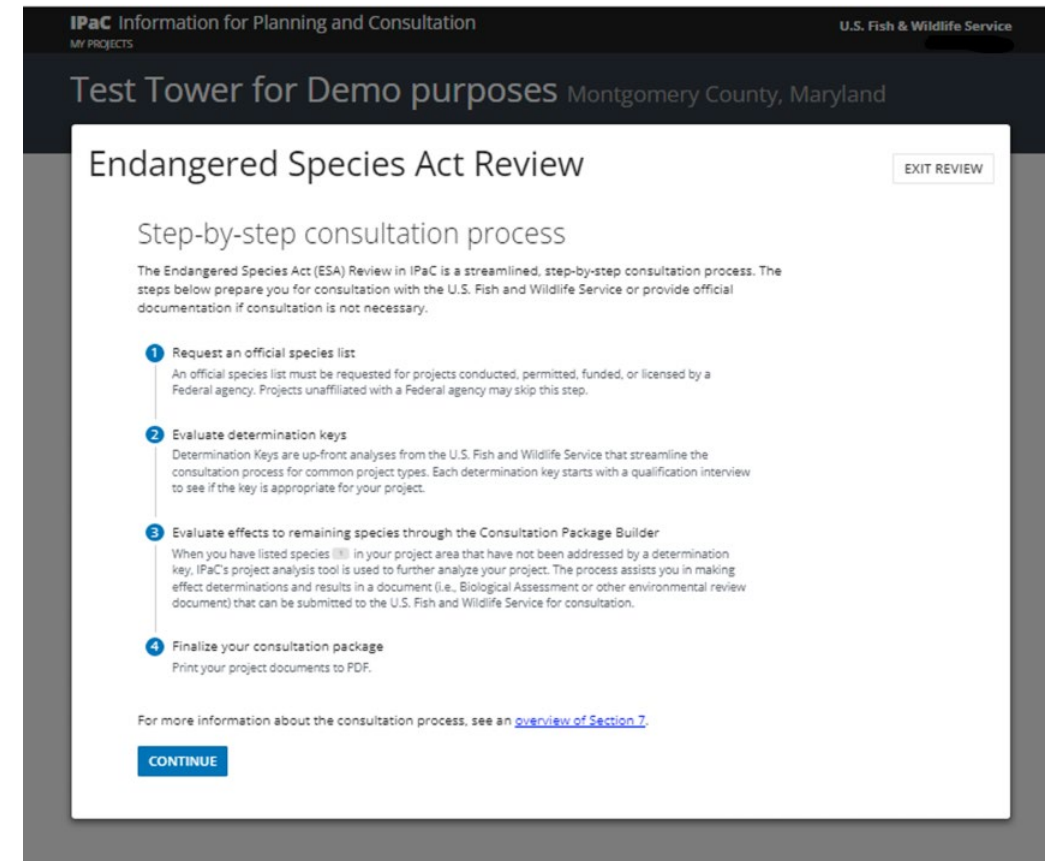
Grantees should refer to the <u>full list of "no effect" activities</u> and their conditions to determine if the proposed project is exempt from ESA Section 7 Consultation.

NTIA

Step 2: Conduct an Online IPaC review

- IPaC is a USFWS tool that provides species lists & critical habitat in the vicinity of a proposed project.

- If IPaC identifies no protected resources, the printout documents that Section 7 obligations are complete.

IPaC is available online at: https://ipac.ecosphere.fws.gov/

Step 3: Apply a DKey Online via IPaC

Grant recipients can also use the FWS's IPaC system to complete ESA reviews online using applicable "Determination Keys" (DKeys), if available.*

WHAT ARE DKEYS?

DKeys are logically-structured sets of yes/no questions within the IPaC tool that help a user determine whether a project qualifies for a predetermined ESA Section 7 consultation outcome based on an existing programmatic consultation or internal FWS standing analysis.

HOW CAN GRANT RECIPIENTS USE DKEYS?

1. Grant recipients will be asked a series of yes/no questions and can select the appropriate radio button to indicate their response.

2. Upon answering the list of questions, grant recipients will be given a preliminary determination for species covered by the DKey.

3. The three potential determinations are "no effect," "not likely to adversely affect," and "may affect." See the Non-Federal Designation Memo for additional information on how to share documentation with NTIA.
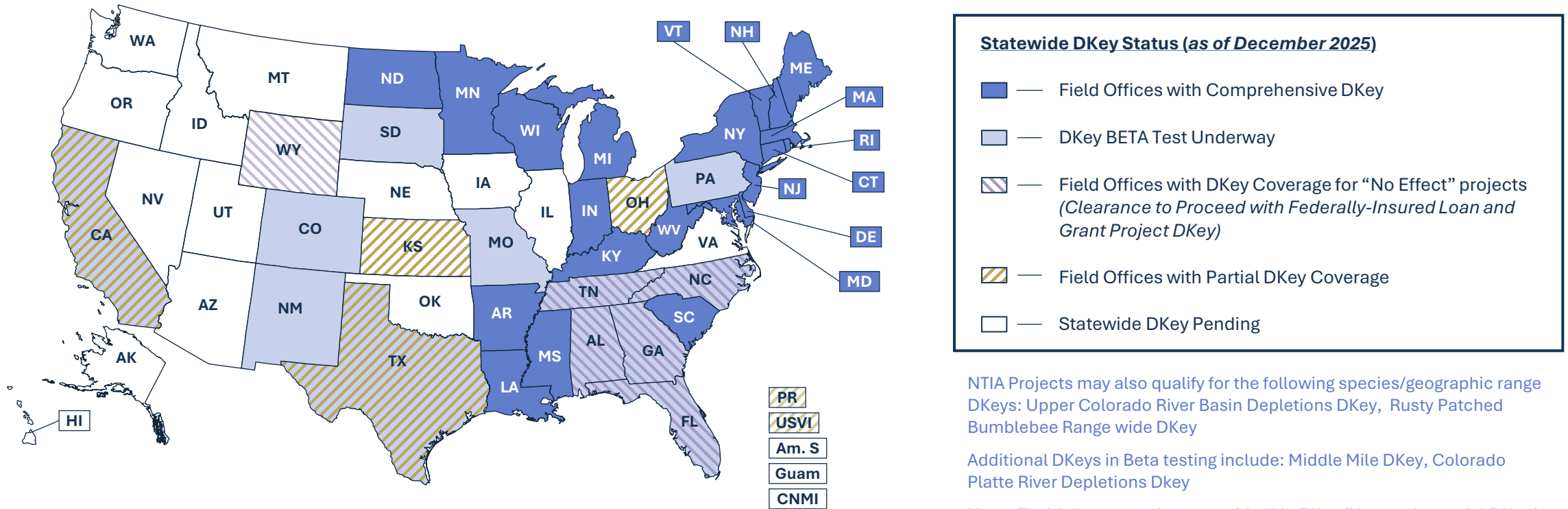
WHAT ARE THE BENEFITS OF DKEYS?

DKeys can reduce the general ESA 60-day (or longer) process for informal consultation to **less than an hour for qualified projects** – a significant savings of time to deployment of NTIA-funded broadband projects.

In the past five years, the IPaC system processed over 175,000 DKey entries, saving significant time and resources for project deployment teams and agency staff.

Note: If a DKey is not available, a biological assessment or review may be required to obtain USFWS concurrence on a project's effect on listed species.

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Nationwide Broadband DKey Expansion

NTIA, the Permitting Council, and the USDA Rural Utilities Service have provided USFWS with funds to expand the availability of DKeys for broadband to all states in 2026.

Statewide DKey Status (*as of December 2025*)

- ■ — Field Offices with Comprehensive DKey
- ■ — DKey BETA Test Underway
- ▨ — Field Offices with DKey Coverage for "No Effect" projects *(Clearance to Proceed with Federally-Insured Loan and Grant Project DKey)*
- ▨ — Field Offices with Partial DKey Coverage
- □ — Statewide DKey Pending

NTIA Projects may also qualify for the following species/geographic range DKeys: Upper Colorado River Basin Depletions DKey, Rusty Patched Bumblebee Range wide DKey

Additional DKeys in Beta testing include: Middle Mile DKey, Colorado Platte River Depletions Dkey

Note: Florida has an active statewide "No Effect" key and a partial DKey in BETA testing

NTIA estimates that this programmatic solution will streamline >70% of USFWS consultations for BEAD and other broadband grant programs, eliminating a significant permitting risk that can delay deployments.