

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

*This document is intended solely to assist recipients in better understanding the Broadband Equity, Access, and Deployment (BEAD) Program and the requirements set forth in the Infrastructure Investment and Jobs Act, Notice of Funding Opportunity (NOFO), as modified by the BEAD Restructuring Policy Notice (RPN). This document does not and is not intended to supersede, modify, or otherwise alter applicable statutory or regulatory requirements, the terms and conditions of the award, or the specific application requirements set forth in the NOFO not modified by the RPN. In all cases, statutory and regulatory mandates, the terms and conditions of the award, and follow-on policies and guidance, shall prevail over any inconsistencies contained in this document.*



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# 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.*

# 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.

# 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 [full list of “no effect” activities](#) and their conditions to determine if the proposed project is exempt from ESA Section 7 Consultation.

# Step 2: Conduct an Online IPaC review

MY PROJECTS

## Test Tower for Demo purposes

Montgomery County, Maryland

PROJECT HOME REGULATORY REVIEW LOCAL OFFICE CHESAPEAKE

### Regulatory review

The IPaC regulatory review process helps you to evaluate the potential impacts of your project on resources managed by the U.S. Fish and Wildlife Service. It walks you through the regulations that cover each protected resource and offers suggestions and assistance in designing your project.

#### Endangered species

Endangered species are protected under the Endangered Species Act (ESA).

2 endangered species are known to occur or may be affected by activities in this location.

**START ESA REVIEW**

IPaC Information for Planning and Consultation

U.S. Fish & Wildlife Service

## Test Tower for Demo purposes

Montgomery County, Maryland

### Endangered Species Act Review

EXIT REVIEW

#### Step-by-step consultation process

The Endangered Species Act (ESA) Review in IPaC is a streamlined, step-by-step consultation process. The steps below prepare you for consultation with the U.S. Fish and Wildlife Service or provide official documentation if consultation is not necessary.

- 1 Request an official species list**  
An official species list must be requested for projects conducted, permitted, funded, or licensed by a Federal agency. Projects unaffiliated with a Federal agency may skip this step.
- 2 Evaluate determination keys**  
Determination Keys are up-front analyses from the U.S. Fish and Wildlife Service that streamline the consultation process for common project types. Each determination key starts with a qualification interview to see if the key is appropriate for your project.
- 3 Evaluate effects to remaining species through the Consultation Package Builder**  
When you have listed species in your project area that have not been addressed by a determination key, IPaC's project analysis tool is used to further analyze your project. The process assists you in making effect determinations and results in a document (i.e., Biological Assessment or other environmental review document) that can be submitted to the U.S. Fish and Wildlife Service for consultation.
- 4 Finalize your consultation package**  
Print your project documents to PDF.

For more information about the consultation process, see an [overview of Section 7](#).

**CONTINUE**

- 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?

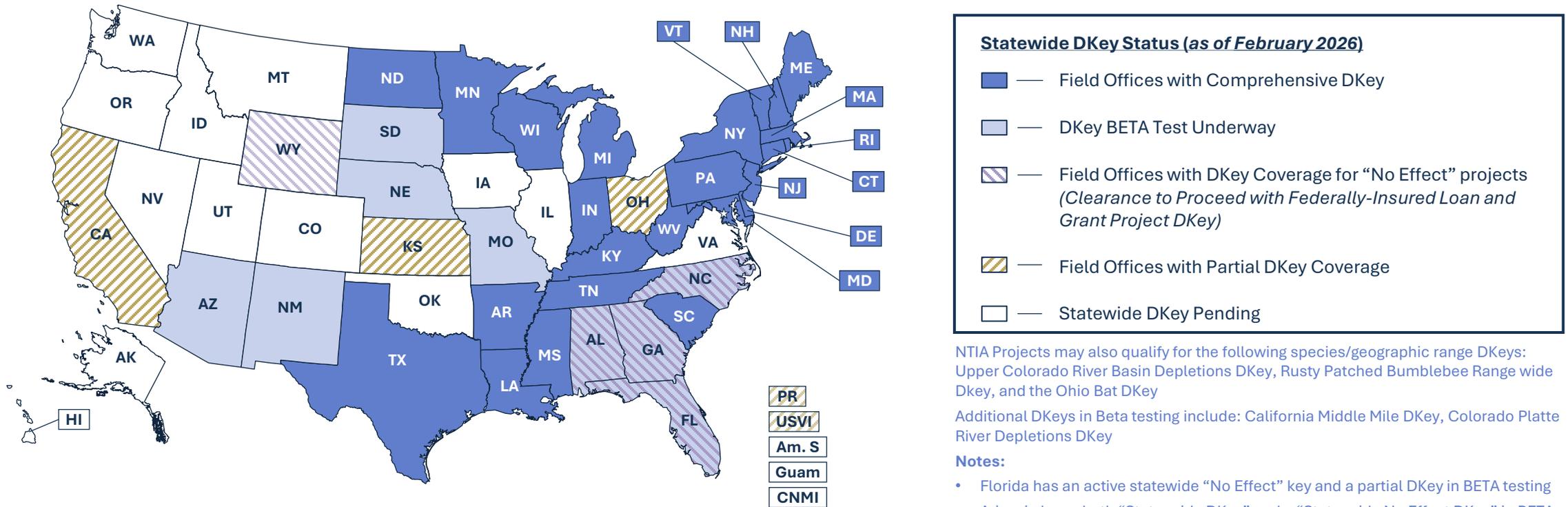
DKeys can reduce the general ESA 60-day (or longer) process for informal consultation to **less than an hour for qualified projects** – a significant savings of time to deployment of NTIA-funded broadband projects.

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.*

# 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.



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.