Purpose of this Process
This process provides guidance to Texas Department of Transportation (TxDOT) staff when considering Endangered Species Act (ESA) Section 7 obligations by:

- Outlining the steps used by TxDOT districts and the Environmental Affairs Division (ENV) for addressing Section 7 responsibilities;
- Outlining the method used by districts for requesting consultation with U.S. Fish and Wildlife Service (USFWS) through ENV; and,
- Defining the responsible parties for uploading documentation into the project file.

Subject Overview
This process requires ENV and the districts to work together to speak with one voice for TxDOT when working with USFWS. The project scope can assign the project sponsor responsibilities to entities other than a district. However, this process outlines the interaction between the district, who may be working with a local project sponsor, and ENV, the entity responsible for the informal and formal consultation process with USFWS.

TxDOT has a cooperative agreement with USFWS to help streamline the environmental process for transportation projects by providing a dedicated transportation liaison (Cooperative Agreement 57-1XXF9001).

When consultation is needed, early coordination with USFWS can help TxDOT and other transportation entities plan and design transportation projects to effectively avoid, minimize, and offset potential environmental impacts to natural resources, thereby reducing the time for environmental clearance.

Authorities
Per 23 USC 327 and the Memorandum of Understanding Concerning State of Texas’s Participation in the Project Delivery Program Pursuant to 23 U.S.C. 327, TxDOT is the federal agency in consultations with USFWS.

Toolkit
Environmental Handbook: Endangered Species Act

Personnel
Personnel involved in this process may include district environmental coordinators, district environmental staff, and ENV staff. Activities covered under this process may also involve coordination with Metropolitan Planning Organizations (MPO), Regional Mobility Authorities (RMA), and other local and regional transportation entities who serve as project sponsors, as well as consulting firms hired to assist in these efforts.
The district is responsible for identifying a potential need for USFWS involvement with a project and, if
needed, contacting ENV to start the collaborative process. ENV must be contacted as early in the project
development process as possible when the need for USFWS resources is anticipated because ENV is
contractually responsible for implementing the terms of the contract with USFWS, monitoring performance
of the USFWS transportation liaison, and serving as the point of contact between TxDOT and USFWS.

Process

**Step 1: Determining Project Impacts and Effects**

1. The district, or the district in conjunction with local governments and/or consultants, determines the
project action area and assesses whether or not the project may affect federally protected species
and/or their habitat. NOTE: The District is ultimately responsible for the effect determination and
must critically assess any input from local governments and/or consultants.

2. If a no effect determination was made, the district records the determination in ECOS by filling out
the Work Plan Development tool, or other pertinent section(s), for CE’s, and including a discussion in
the body of the environmental document for EAs/EISs. The district also uploads any backup
documentation to the Environmental Compliance Oversight System (ECOS). The process is
complete.

3. If a project may affect a listed species or critical habitat, proceed to the following section

**Step 2 (if needed): Communications with ENV in Preparation for USFWS Consultation**

1. The district prepares a request for technical assistance and submits the request to ENV via
`env_bio@txdot.gov` or by contacting their ENV assigned biologist directly. The following information
should be provided in the request.

   - The type of assistance being requested (e.g. early project coordination, training on technical
     issues, etc.)
   - A brief description of the project or technical assistance requested;
   - A brief description of the action(s) with the potential to impact federally listed or federal candidate
     species;
   - Any species and/or issues of concern prompting the request; and
   - Any important project dates.

2. The district will track the consultation in an ECOS “Coordination” with USFWS.

3. The district and ENV come to an agreement on the level of effect and consultation required.

4. If the project may affect but is not likely to adversely affect a species and/or habitat, ENV initiates
informal consultation, as outlined in the following section.

5. If the project may affect and is likely to adversely affect a species and/or habitat, the project has the
potential to adversely affect or modify designated critical habitat, or there is the potential for USFWS
to make a Jeopardy call, ENV initiates formal consultation, as outlined in the following section.

6. If the district and ENV biological staff cannot come to agreement on the potential effects, elevate the
issue to the ENV Natural Resources Management Section Director for resolution.
7. ENV and the district will ensure that each party is informed of project relevant discussions, meetings, recommendations, and other information provided by USFWS.

**Conducting Consultation with USFWS Under Section 7 of the ESA**

**Step 3 (if needed): Initiating and Documenting Informal Consultation**

1. The district or ENV, as specified in the project scope or otherwise agreed upon, prepares an informal consultation. The informal consultation document should be developed using the ENV Biological Evaluation (BE) Documentation Standard. Required content for the BE can be included in a letter, or the BE can be a separate report with a cover letter
   - If the district prepares the informal consultation document, the district sends the draft letter to ENV for review and comment. If ENV prepares the letter, ENV sends the draft letter to the district for review and comment.
2. ENV and the district work together to resolve all comments on the draft informal consultation. When all comments have been resolved, a final, formatted letter is printed on TxDOT letterhead paper for signature.
3. The signature authority for the consultation letter is the ENV Division Director or his or her delegate.
4. ENV scans the signed request letter and BE document, if separate, (collectively the informal consultation package) to create a pdf file and emails it to the district.
5. ENV uploads the informal consultation package to ECOS and associates it with the appropriate coordination task.
6. The district uploads any supporting documents and reports to ECOS.
7. ENV emails the final informal consultation package to USFWS and copies the district on the email. If a BE was prepared, ENV uploads it to ECOS with the request letter.
8. ENV may also supply a draft NEPA document to USFWS, but it should be submitted separately from the request letter.
9. ENV mails the original signed copy of the consultation package to USFWS at the following address.
   
   United States Fish and Wildlife Service  
   Attn: TxDOT Transportation Liaison  
   10711 Burnet Road, Suite 200  
   Austin, Texas 78758

10. USFWS may respond with a request for more information, make a determination that formal consultation is required, or issue a letter of concurrence or non-concurrence.
11. If a concurrence is received, ENV uploads the concurrence letter into ECOS with “APPROVED” as the first word in the document title.

**Step 4 (if needed): Initiating and Documenting Formal Consultation**

1. The district or ENV, as specified in the project scope or otherwise agreed upon, prepares a cover letter and consultation package requesting formal consultation with USFWS, including a BA prepared using the BA Documentation Standard.
• If the district prepares the formal consultation package, the district submits the draft BA and cover letter to ENV for review and comment. If ENV prepares the formal consultation package, ENV submits the draft BA and letter to the district for review and comment.

2. Once ENV and district comments on the draft BA have been addressed, ENV submits the final BA to USFWS.

3. ENV uploads the final BA to ECOS associated with the appropriate coordination task and deletes the draft BA from the project file.

4. The district uploads any supporting documents and reports to ECOS.

5. USFWS reviews and determines if the consultation package is complete and drafts a biological opinion (BO).

6. ENV and the district review the draft BO.
   • The district communicates comments and suggestions regarding the BO to ENV.
   • ENV and the district collaborate to formulate TxDOT comments and ENV provides comments back to USFWS.

7. USFWS delivers a final BO to ENV (if the district is not included in communication, ENV notifies the district).

8. ENV uploads the final BO to ECOS under the appropriate coordination task with “APPROVED” as the first word in the document title, conducts a review of ECOS to ensure all required documents have been uploaded, and closes the coordination task. The district and ENV will coordinate to upload any outstanding documents that may be needed.

The process is complete.
# Appendix A: Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Name</th>
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<tbody>
<tr>
<td>BA</td>
<td>Biological Assessment</td>
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<td>BE</td>
<td>Biological Evaluation</td>
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<td>BO</td>
<td>Biological Opinion</td>
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<td>CWA</td>
<td>Clean Water Act</td>
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<td>ECOS</td>
<td>Environmental Compliance Oversight System</td>
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<td>EIS</td>
<td>Environmental Impact Statement</td>
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<td>ENV</td>
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<td>ESA</td>
<td>Endangered Species Act</td>
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<td>FHWA</td>
<td>Federal Highway Administration</td>
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<td>NEPA</td>
<td>National Environmental Policy Act</td>
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<td>MPO</td>
<td>Metropolitan Planning Organization</td>
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<td>RMA</td>
<td>Regional Mobility Authority</td>
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<td>TxDOT</td>
<td>Texas Department of Transportation</td>
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<tr>
<td>USFWS</td>
<td>U.S. Fish and Wildlife Services</td>
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Appendix B: Revision History

The following table shows the revision history for this document.

<table>
<thead>
<tr>
<th>Effective Date Month, Year</th>
<th>Reason for and Description of Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 2017</td>
<td>Version 1 was released. This document replaces Standard Operating Procedure for Assessing USFWS Ecological Services for Technical Assistance and Section 7 Consultations (300.01.SOP) This SOP narrows the focus of the document to focus on TxDOT personnel tasks only, and removal of guidance on how to make ESA-related decisions. Changed from a “standard operating procedure” to a process.</td>
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