

*Texas Department of Transportation
Environmental Affairs Division*

Standards of Uniformity for Projects Without Federal Highway Administration Involvement

A Guide to Projects without FHWA Involvement

Biological Resources

Biological Resources. Section 1. Federal Requirements

This SOU provides guidance to establish and document within the environmental project document (document) that significant impacts to biological resources and unusual circumstances do not exist (23 CFR 771, 43 TAC 2.10(b)(2)). It includes the applicable regulations, recommended language, and triggers for agency coordination in the absence of FHWA involvement or funding.

NOTE: If a project becomes eligible for and receives federal aid funds, approvals, permits, licensing, or other federal nexus, this SOU is not appropriate. Additional federal level regulations would be applicable and that document would be prepared using an applicable SOU for the appropriate level of documentation (PCE, CE, EA, or EIS).

Section 1. Federal Requirements

The following regulations apply to all projects (local, state, and federal)

- The Migratory Bird Treaty Act
- The Endangered Species Act
- Bald and Golden Eagle Protection Act

Yes	No	N/A	Description of Item Sufficiency	References/Guidance
Endangered Species Act of 1973 No federal funding or sponsor – Section 10				
1			Are all federally listed species and designated critical habitat addressed?	Digest of Federal Resource Laws of Interest to the U.S. Fish and Wildlife Service (USFWS) USFWS Threatened and Endangered Species List
2			Is “take” of a federally listed species likely to occur? If so, contact USFWS/NMFS directly and consult as needed to resolve any issues. Include Biological Opinion and Incidental Take Statement in appendices.	
3			Is there a detailed assessment of the action in relation to each of the federally listed species, and their habitat, to support the effect call? <i>(Is habitat present? If so, will it be</i>	

Biological Resources. Section 1. Federal Requirements

Yes	No	N/A	Description of Item Sufficiency	References/Guidance
			<i>affected? If species are in or near the project's action area, how will they be affected?)</i>	
4			<p>Are all environmental reports* in support of effects calls, either produced by the local government (or TxDOT for state projects) or local government consultants (or TxDOT consultants for state projects), identified in a table or a separate reference page?</p> <p>Environmental reports should be submitted prior to or concurrently with submittal of the environmental document.</p>	
5			Has USFWS and/or NMFS issued a Section 10 permit? If so, is this recorded in the environmental document and/or included in the appendices?	
Migratory Bird Treaty Act				
6			<p>Is the Migratory Bird Treaty Act adequately addressed?</p> <p>An adequate statement includes, at a minimum, the following three items:</p> <ol style="list-style-type: none"> 1. Acknowledgement of the MTBA 2. Acknowledgement of the applicability to the project 3. A statement explaining how the project will comply with the MBTA. 	Migratory Bird Treaty Act
Bald and Golden Eagle Protection Act				
7			Is the project within range and suitable habitat for Bald Eagles? If so, then make a statement that the project will adhere to the National Bald Eagle Management Guidelines of 2007. This statement should be included in the document.	National Bald Eagle Management Guidelines

Biological Resources. Section 1. Federal Requirements

***Environmental Report** — A standalone written document and supporting documentation that demonstrate legally acceptable completion of a regulatory requirement. Environmental reports are used to support a NEPA or state environmental decision, and to determine whether a project may proceed to construction. Environmental reports include:

- i. technical reports on environmental studies that contain data and analyses that address environmental requirements, and that document completion of compliance obligations
- ii. technical reports on nonenvironmental studies (e.g., traffic studies, alternatives analyses, need and purpose statements) that contain data and analyses essential to completing environmental reports and environmental review documents
- iii. standardized forms required by a regulatory agency for review and approval
- iv. department forms, memoranda, or letters used to provide a record of studies, analyses, and conclusory determinations for environmental issues not subject to review by a regulatory agency
- v. correspondence or other written records documenting regulatory agency recommendations, recommendations for environmental studies or other environmental tasks, and conclusory determinations that the agency has approved the project for construction or has agreed to commitments to resolve environmental issues after the environmental approval.

Biological Resources. Section 2. State Requirements

Section 2. State Requirements

For all surface transportation projects designed, constructed, and maintained by TxDOT, excluding toll projects, TxDOT must include the following information and address the following triggers for coordination with the Texas Parks and Wildlife Department (TPWD), according to the Memorandum of Understanding between TxDOT and the TPWD (TAC43(1)(2)(B)(22.2)) and memoranda of agreements:

Yes	No	N/A	Description of Item Sufficiency	References/Guidance
Species Impact Table				
8			<p>Does the Impact Table for federally listed species also include state listed T&E species and species of concern?</p> <p>At minimum, the table should include:</p> <ul style="list-style-type: none"> a. the scientific name b. the common name c. a brief habitat description d. indication of whether any suitable habitat is present e. determination of effect/impact f. All Element Occurrence Records (EOIDs) found in the Natural Diversity Database (NDD) search g. a taxonomically organized table (following groupings provided in the TPWD county lists) h. the dates of the county list that was used to construct the table 	<p>Impact Assessment Language for Species Not Federally Protected Under the Endangered Species Act</p>
Triggers for Texas Parks and Wildlife Department Coordination				
8			<p>Does the project involve more than 1.0 acre of new ROW within floodplains or creek drainages in rural or undeveloped urban areas?</p> <p>If yes, coordinate with TPWD.</p>	<p>TxDOT/TPWD Memoranda of Understanding -- TAC43(1)(2)(B) 2.22(d)(2)(A)</p>
9			<p>Does the project require channel modifications to streams, rivers, or water bodies?</p> <p>If yes, coordinate with TPWD.</p>	<p>TxDOT/TPWD Memoranda of Understanding -- TAC43(1)(2)(B) 2.22(d)(2)(B)</p>

Biological Resources. Section 2. State Requirements

	Yes	No	N/A	Description of Item Sufficiency	References/Guidance
10				Does the project involve a channel re-alignment requiring the creation of new drainage ways or other excavation impacting more than 1.0 acre of mature woody vegetation? If yes, coordinate with TPWD.	TxDOT/TPWD Memoranda of Understanding -- TAC43(1)(2)(B) 2.22(d)(2)(C)
11				Does the project require any excavation (scraping, clearing, or other surface disturbance) of the existing channel outside of TxDOT's existing ROW, or of the channel inside the ROW which is not routinely maintained and exhibits native vegetation? If yes, coordinate with TPWD.	TxDOT/TPWD Memoranda of Understanding -- TAC43(1)(2)(B) 2.22(d)(2)(D)
12				Might the project affect mature woody vegetation or dense mature brush, including any significant remnant native vegetation (e.g., undisturbed native prairie or bottomland hardwood, etc.)? If yes, coordinate with TPWD.	TxDOT/TPWD Memoranda of Understanding -- TAC43(1)(2)(B) 2.22(d)(2)(E)
13				Is the project within range and in suitable habitat of any state or federally listed threatened or endangered species? If yes, coordinate with TPWD.	TxDOT/TPWD Memoranda of Understanding -- TAC43(1)(2)(B) 2.22(d)(2)(F)
14				Does the project involve mitigation plans or otherwise involve proposals to redress project impacts on fish, wildlife, or plant resources? If yes, coordinate with TPWD.	TxDOT/TPWD Memoranda of Understanding -- TAC43(1)(2)(B) 2.22(d)(2)(G)
15				Does the project have previous environmental clearance (i.e., three years have passed without major action(s) and/or TPWD review, but the project now meets any of the above listed criteria)? If yes, coordinate with TPWD.	TxDOT/TPWD Memoranda of Understanding -- TAC43(1)(2)(B) 2.22(d)(2)(H)
16				Have three years passed since environmental clearance with major actions (i.e., the TPWD may have or may not have reviewed, but the project meets	TxDOT/TPWD Memoranda of Understanding -- TAC43(1)(2)(B)

Biological Resources. Section 2. State Requirements

	Yes	No	N/A	Description of Item Sufficiency	References/Guidance
				any of the above listed criteria)? If yes, coordinate with TPWD.	2.22(d)(2)(I)
17				If there was or will be coordination with TPWD, has it been discussed in the document?	
MOU/MOA Documentation					
18				The following document elements are required per the TxDOT and Texas Parks and Wildlife Department (TPWD) Memorandum of Understanding (MOU) and Memorandum of Agreement (MOA), or by ENV guidance/policy memoranda.	TxDOT/TPWD Memoranda of Understanding -- TAC43(1)(2)(B) 2.22
19				Does the document include a general description of vegetation types, as described in the TPWD Vegetation Types of Texas (TPWD, 1984)? Include any available maps, aerial photos (with dates), photos, etc. to supplement the description.	The Vegetation Types of Texas Memorandum of Agreement with TPWD for Finalization of 1998 MOU Concerning Habitat Descriptions and Mitigation
20				Does the document provide a statement indicating whether the existing vegetation matches the description from the Vegetation Types of Texas, and whether there is an unusual difference between vegetation inside and outside the ROW?	
21				Does the document identify any unusual vegetation features and/or special habitat features within the ROW? Unusual vegetation features may include (but are not limited to): unmaintained vegetation, fencerow vegetation, riparian, unusually large trees for the area, or unusual/isolated stands of vegetation. Special habitat features include: bottomland hardwoods, caves, cliffs and bluffs, native prairies, ponds, seeps or springs, snags, water bodies, and bird or bat colonies in structures.	
22				Does the document describe and quantify permanent and temporary impacts to (1) unusual vegetation features and (2) special habitat features?	

Biological Resources. Section 2. State Requirements

Yes	No	N/A	Description of Item Sufficiency	References/Guidance
			Quantification should include either the areal extent or the number of trees impacted.	
23			Does the document discuss the steps taken to avoid or minimize impacts to unusual vegetation and special habitat features? This discussion should include: balancing decisions made with respect to other natural and environmental issues, community, social and historic issues, and safety and operational design elements.	
24			Does the document describe any habitat that occurs for state or federally listed threatened or endangered species, or for candidate species and species of concern, within or abutting the ROW?	
25			Does the description include the habitat requirements of any listed species, candidate species, or species of concern (highly recommended)?	
26			Is the project on new location? If yes, the document must include the all the information above, as well as the following: <ul style="list-style-type: none"> • dominant species for each vegetation strata, including: tree, shrub, vine, and any herbaceous (grass and forb) layers • height of trees (range) • diameter at breast height of trees (range and average) • percent canopy cover of trees • acreage of vegetation types 	
27			Does the document describe land use within and outside of the proposed ROW?	
28			For projects with multiple alternatives, are all alternatives evaluated to the same level of detail?	
29			Is the project on existing location but requires additional ROW?	

Biological Resources. Section 2. State Requirements

	Yes	No	N/A	Description of Item Sufficiency	References/Guidance
30				Is all of the information required for projects on existing location included for existing and new ROW?	
31				Is all of the information required for projects on new location included for any unusual vegetation or special habitat features?	
32				Does the discussion include a statement that clearly addresses mitigation for regulated and non-regulated habitats, regardless of whether or not it is proposed? Specifically, the document must address, at a minimum, the five habitat types listed in the MOA for compensatory mitigation.	TxDOT/TPWD Memorandum of Agreement TxDOT/TPWD Memorandum of Understanding TAC43(1)(2)(B)(2.22)(d)(4)(B)
				If no compensatory mitigation is proposed, is justification provided?	
Memorandum of Agreement (MOA) for Sharing and Maintaining Natural Diversity Database Information and TxDOT/TPWD MOU TAC43(1)(2)(B)(22.2) (e)(1 & 2)					
33	Per the TxDOT and Texas Parks and Wildlife Department (TPWD) Memorandum of Agreement (MOA) for Sharing and Maintaining Natural Diversity Database Information and the Guidelines for TXNDD Data Analysis in TxDOT Environmental Documents, specific criteria and standards for documentation are required. These apply to state projects only.				
34				Has a search of the Natural Diversity Database (NDD) been performed that meets all the requirements of the TxDOT/TPWD MOA for Sharing and Maintaining Natural Diversity Database Information and the Guidelines for TXNDD Data Analysis in TxDOT Environmental Documents, and have the results been included? Results should include the enumeration of all Element Occurrence Records (EOIDs) and all managed areas within the search radius.	Memorandum of Agreement (MOA) for Sharing and Maintaining Natural Diversity Database Information and TxDOT/TPWD MOU
35				Are the project's potential impacts to the operation of any nearby managed areas discussed?	

Biological Resources. Section 2. State Requirements

Yes	No	N/A	Description of Item Sufficiency	References/Guidance
36			If the project area is to be surveyed for species or habitat, is there a description of the survey protocols or a statement that specific USFWS established protocols were utilized?	
37			Is there evidence that a search of the NDD using a 1.5 mile buffer (required) and a 10-mile buffer (strongly recommended) around the entire project area was conducted?	
38			Are the results of the NDD search reported, including EOID numbers, common names, scientific names, and listing status for all EO reps? This information can be included in the species impact table discussed above. If a broader search radius was used, identify that search radius and report the results, following the above guidelines.	
39			If the NDD was checked using the NDD Mimic, is the NDD Mimic version date and the date the search was performed provided?	
40			Does the discussion include a statement that the NDD cannot be used for presence/absence determinations?	
41			Do maps included comply with the MOU by omitting the locations of records from the NDD in the document?	
Indirect and Cumulative Impacts Analysis				
42			Have indirect and cumulative impacts been addressed in accordance with current TxDOT guidance?	Guidance on Preparing Indirect and Cumulative Impacts Analyses

NOTE: For state level projects that are not TxDOT transportation projects as defined above, laws and regulations pertaining to endangered or threatened animal species are contained in Chapters 67 and 68 of the Texas Parks and Wildlife (TPW) Code and Sections 65.171 - 65.176 of Title 31 of the Texas Administrative Code (T.A.C.) Laws and regulations pertaining to endangered or threatened plant species are contained in

Biological Resources. Section 2. State Requirements

Chapter 88 of the TPW Code and Sections 69.01 - 69.9 of the T.A.C. TPWD regulations prohibit the taking, possession, transportation, or sale of any of the animal species designated by state law as endangered or threatened without the issuance of a permit. State laws and regulations prohibit commerce in threatened and endangered plants and the collection of listed plant species from public land without a permit issued by TPWD. In addition, some species listed as threatened or endangered under state law are also listed under federal regulations. These animals are provided additional protection by the U.S. Fish and Wildlife Service.