



MEMO NO. ESA - 3
November 2012

SUBJECT: ESA - CONSIDERATION OF CANDIDATE SPECIES & CHANGE MGMNT
FOR ATTENTION OF: Environmental and Design
REFERENCE: Environmental Process Manual – Sec 1050.02 ESA Procedures

Memo Purpose: To clarify ITD procedures for evaluating project effects on Candidate Species. [This replaces a prior May 2011 memo.] This memo assumes the reader has a basic understanding of the Endangered Species Act and associated nomenclature and acronyms.

Background

- Candidate species are not protected under the Endangered Species Act; neither consultation nor conference with the Services is required.
- If a candidate species becomes listed as Threatened or Endangered before or during construction, a determination of effect is required before construction can proceed.
- A candidate species is a sensitive biological resource and should be discussed in the NEPA document.
- Candidate Species present an unknown future impact to project scope, schedule and budget. Change Management strategies are recommended.

Risk. Staff must balance the cost of unnecessary BA preparation against the potential cost to project delivery.

Stewardship decisions. The Services encourage federal agencies to consider implementing conservation measures for candidate species, as these measures may avoid the future necessity of listing. At the discretion of the project sponsor, implement stewardship or conservation measures when reasonable and cost effective.

ITD Process for candidate species

NEPA disclosure (ITD 654):

- Do not make a determination of effect.
- Document listed candidate species in the Environmental Evaluation under the section reserved for wildlife/fish resources/habitat (currently #16 on the ITD 654 form).
- Discuss the presence or absence of the species, habitat, potential impacts, and conservation measures, if applicable. -Or- if the candidate species is addressed in a BA, reference the BA discussion.

Scenario 1 – No impacts anticipated

1. If desired, make a “no impact” statement. This may look similar to No Effect Determination language without the ESA language and determination. This documentation may facilitate quick conversion to a No Effect determination if the species became listed.
2. Monitor the candidate species listing status at final design review and PSE, or interim as needed.
3. Update documentation when needed.

Scenario 2 – Impacts “not likely to adversely affect” or “likely to adversely affect” anticipated

2a. Risk to schedule is unacceptable.

- Request FWS conduct a conference or informal conference on the candidate species (via standard ITD BA submittal process).
- If/when the candidate species becomes listed, request FWS issue a letter re-designating the conference opinion with its terms, conditions and provisions as a BO for the species.
- This assumes that the project description, effects on the species, etc., remain unchanged from the information exchanged in the conference process.

2b. **Risk to schedule is tolerable.** Do not prepare a Biological Assessment for the candidate species; do continue to monitor species status.

Who makes the decision? The decision to request a conference opinion on a candidate species is made jointly by the Project Manager and the Project Environmental Planner based on the risk to project schedule and the level of effort for documentation. ITD HQ, FHWA and/or FWS will not direct ITD District (LHTAC) staff, but can provide advice upon request.

Decision factors. Consider the following when assessing the level of risk vs. level of effort:

1. Does the project otherwise need a BA for the listed species? Do you anticipate effects to the candidate species? If yes to both, it may be efficient and cost effective to include the candidate species discussion in the BA.
2. What is the risk the candidate will become listed during the life of the project (including construction)?
3. What is the project exposure to the risk (How many years remain until construction will be complete)?
4. What are the ramifications of potential schedule delays?
5. How much time would BA prep/approval take?
 - Is the project action and candidate species covered by the programmatic Biological Assessment?
 - What is the level of impact to species? Generally speaking, the greater the impact, the more time in ESA consultation.
 - Would a last minute BA require a time consuming supplemental agreement with a consultant?