



Standard Local Operating Procedures for Endangered Species in Louisiana

between

**Federal Energy Regulatory Commission (FERC), Office of Energy Projects (OEP),
Division of Gas - Engineering and Environment (DG2E)**

and

U.S Fish and Wildlife Service (FWS), Louisiana Ecological Services Office

1. BACKGROUND

SLOPES is an acronym for Standard Local Operating Procedures for Endangered Species. IPaC is an acronym for Information Planning and Consultation for Endangered Species. The development of SLOPES and the IPaC consultation tool are supported in the U.S. Fish and Wildlife Service Consultation Handbook (1998) which states "*although no counterpart regulations have been issued to date, field stations may consider entering into optional procedures that provide better working relationships with other agencies at a local level consistent with 50 CFR §402.*"

2. APPLICABILITY

These operating procedures (SLOPES) shall apply to the Federal Energy Regulatory Commission (FERC), Office of Energy Projects, Division of Gas Environment and Engineering (DG2E) and the U.S. Fish and Wildlife Service, Louisiana Ecological Services Office (the Service) herein sometimes referred to individually as "Party" and collectively as the "Parties," for FERC-jurisdictional natural gas projects that are reviewed by DG2E within the geographic boundary of the State of Louisiana. Nothing in these procedures shall supersede the terms and conditions of previously issued FERC Orders, concurrences, or biological opinions between the parties. This SLOPES agreement is effective the date of the last Party's signature.

3. PURPOSE

FERC's DG2E and the Service will use the procedures described in this document to effectively carry out their respective responsibility under the Endangered Species Act (ESA) and to maintain and promote an efficient permit application review process.

4. GENERAL RESPONSIBILITIES

FERC

Section 7 of the ESA mandates consultation with the Secretary of the Interior (via the Service) to ensure that any "agency action" is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of an endangered or threatened species' critical habitat. Upon considering that an action triggers an ESA consultation, FERC, or the FERC applicant (in the role of FERC's designated non-federal representative for informal consultation (18 CFR §380.13[b][1])), will make an initial determination on potential impacts to federally listed species using the IPaC tool, SLOPES, and/or other information from the Service, FERC, and/or best-available scientific and commercial data. FERC, or the FERC applicant, may request project-specific species information from the Service by letter or electronic mail to assess potential project impacts to federally listed species. FERC is encouraged to document its rationale for reaching any determination of effect or no effect to listed species or to critical habitat in official FERC files and/or records by whichever means FERC deems appropriate.

Service

The Service will respond to any correspondence from FERC, or its designated non-federal representative, within statutorily defined or previously agreed-to timeframes. The Service will provide project-specific species and critical habitat information to FERC, or its designated non-federal representative if requested or deemed necessary. The Service will update any existing SLOPES and IPaC Determination Keys (dkeys) if changes in listing category occur, species range maps are modified, or changes to critical habitat boundaries occur. The Service will develop additional SLOPES if new species are added to or removed from the Federal List of Endangered and Threatened Species. The Service will meet with FERC staff as needed to assist them in understanding and utilizing the IPaC Tool and SLOPES.

The IPaC Tool, however, is not intended to be used in after-the-fact cases. The IPaC Tool is specifically designed for routine actions, so that limited staff time may be spent on more significant actions. As such, after-the-fact reviews will not be handled through use of the IPaC tool.

5. DETERMINATION OF EFFECTS

FERC's (or its designated non-federal representative's) determination of effects to a federally listed species as a result of the proposed activity will be based on the use of the IPaC Tool and criteria below. Further coordination will be conducted with the Service as indicated herein.

The FERC signatory will retain discretionary authority to 1) make "No Effect" determinations when appropriate, documenting the basis for the finding(s) according to internal administrative procedures, and/or 2) submit a request to the Service to initiate consultation, according to Standard Section 7 procedures, when it is believed the project effect and consequences to listed species/critical habitat have not been adequately evaluated through the IPaC tool.

- a. “No effect” to listed species or to designated critical habitat:
 - i. If the species is not registered on the parish list where the project is proposed, then a determination of “no effect” is reasonable and no further coordination with the Service is necessary.
 - ii. If the species is registered on the parish list where the project is proposed, but no suitable habitat is present within the project area, then a determination of “no effect” is reasonable and no further coordination with the Service is necessary.
 - iii. If designated critical habitat is not present within the proposed action area, then a determination of “no effect” is reasonable and no further coordination with the Service is necessary.

- b. “May affect” listed species:
 - i. If the species is registered on the parish list where the project is proposed and suitable habitat is present within the action area, then a determination of “may affect” is warranted. Work may not proceed until the listed species issue is resolved.
 - 1. Not likely to adversely affect:

This secondary determination is appropriate when the project’s effects are insignificant, discountable, or completely beneficial; and no take is likely. Species protective measures (contained within individual SLOPES dkeys) will be incorporated into any conditions of approval of the proposed action. Under such conditions, the Service concurs that a "may affect, but not likely to adversely affect" determination is reasonable and no further coordination with the Service is necessary.
 - 2. Likely to adversely affect:

This secondary determination is appropriate when any project-related impacts adversely affect federally listed species, and those adverse impacts cannot be ameliorated through modifying the project design. With this determination, FERC will request initiation of formal Section 7 consultation with the Service and will prepare a biological assessment. Close coordination with Service staff is encouraged during development of the biological assessment. Once the Service receives the request and completed biological assessment, the Service will have up to 135 days to complete its biological opinion.

- c. “May affect” designated critical habitat:

- i. If critical habitat is present where the project is proposed, and the project site will affect critical habitat, then either:
 1. A determination of “may affect” is warranted. The proposed action cannot proceed until the designated critical habitat issue is resolved. With this determination, FERC will request initiation of formal Section 7 consultation with the Service and will prepared a biological assessment. Close coordination with Service staff is encouraged during development of the biological assessment. Once the Service receives the request and completed biological assessment, the Service will have up to 135 days to complete its biological opinion.
- Or-
2. If critical habitat protective measures will be incorporated into any conditions of approval of the proposed action, then in such cases, the Service concurs that a "may affect, not likely to adversely affect" determination is reasonable and no further coordination with the Service is necessary.

6. EFFECTIVE DATE

This procedure is effective upon acceptance by both Parties. This procedure shall remain in effect until terminated. Both Parties may amend the procedure by mutual agreement, and either party may terminate it with a 30-day written notice to the other.

FERC DG2E and the Service will review this operating procedure on an annual basis and will consider whether to modify, extend, or revoke the procedure at least every three (3) years. If the SLOPES procedure or the use of the IPaC Tool is not revoked in writing by either agency, it will be automatically extended.

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