

Endangered Species Act: No Effect Guidance for Oregon

Prepared in collaboration with the U.S. Fish and Wildlife Service and NOAA Fisheries
Applies in Oregon only (24 CFR Part 58)

General requirements	ESA Legislation	HUD Regulations
Section 7 of the Endangered Species Act mandates that actions that are authorized, funded, or carried out by Federal agencies do not jeopardize the continued existence of plants and animals that are listed or result in the adverse modification or destruction of designated critical habitat.	The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; particularly section 7)	24 CFR 58.5(e) 24 CFR 50.4(e)

Purpose: The purpose of this checklist is to assist HUD and responsible entities meet their Endangered Species Act obligations. A determination of “no effect” to federally listed species and critical habitat fulfills HUD’s and the responsible entity’s obligation to ensure actions it authorizes, funds, or carries out do not jeopardize the continued existence of listed species or adversely modify designated critical habitat. “No effect” determinations do not require coordination with or approval from the U.S. Fish and Wildlife Service and/or NOAA Fisheries.

Definition: “No effect” – the appropriate determination when the proposed action, including its interrelated and interdependent actions, will not affect (i.e., influence or bring about any change) listed species or designated critical habitat either directly or indirectly.

The following questions will help you determine if the proposed project will have an effect to federally listed species or designated critical habitat. The list of activities is not all-inclusive, but provides examples of typical types of projects that would meet a “no effect” determination.

1. Does the project consist solely of the following activities: purchasing existing buildings; completing interior renovations to existing structures; replacement or repairs to existing roofs (not including galvanized material unless it has been sealed or otherwise confined so that it will not leach into stormwater); replacing exterior paint or siding on existing buildings; adding sprinkler systems or repairing landscape, not including removing trees or shrubs?

Yes: STOP here. The project will have No Effect on listed or proposed species, and designated or proposed critical habitat. Consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries is not required. Record your determination of no effect and maintain this documentation in your ERR.

No: PROCEED to #2

2. Does the project consist solely of the any of the following activities and not result in an increase of impervious surface, removal of trees, or removal of streamside vegetation: rehabilitation of an existing structure; reconstruction or repair to existing curbs, sidewalks or other concrete structures; repairs to existing parking lots (for example repairing pot holes or repainting lines – not expansions); purchasing or installing appliances?

Yes: STOP here. The project will have No Effect on listed or proposed species, and designated or proposed critical habitat. Consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries is not required. Record your determination of no effect and maintain this documentation in your ERR.

No: PROCEED to #3

3. If new construction, does construction occur on a previously developed parcel and meet all of the following criteria: does not add new impervious surfaces; does not remove trees or streamside/riparian vegetation; complies with all state and local building codes and stormwater regulations; infiltrates all stormwater or does not discharge stormwater to a salmonid-bearing stream or proposed/designated critical habitat.

Yes: STOP here. The project will have No Effect on listed or proposed species, and designated or proposed critical habitat. Consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries is not required. Record your determination of no effect and maintain this documentation, including information about the stormwater discharge, in your ERR.

No: PROCEED to #4

4. If new construction, does construction add new impervious surfaces to a previously developed parcel and meet all of the following criteria: does not remove native vegetation, trees or streamside/riparian vegetation; complies with all state and local building codes and stormwater regulations; discharges treated stormwater to non- salmonid-bearing stream within the same subbasin (discharge point must be a minimum of ¼ mile from salmonid bearing stream or proposed/designated critical habitat) or infiltrates all treated stormwater within the same subbasin.

Yes: STOP here. The project will have No Effect on listed or proposed species, and designated or proposed critical habitat. Consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries is not required. Record your determination and maintain this documentation, including information about the stormwater discharge, in your ERR.

No: PROCEED to #5

5. Would project effects, including those that extend beyond the project site (e.g., noise, air pollution, water quality, stormwater discharge, visual disturbance), overlap with identified federally listed or proposed species occurrences or designated or proposed critical habitat or potential habitat (e.g., roosting, feeding, nesting, spawning, rearing, overwintering sites, or migratory corridors) for listed species?

For terrestrial and non-anadromous species under the jurisdiction of the USFWS, please visit the following website to download a species list for the county in which the project occurs: <http://www.fws.gov/oregonfwo/Species/Lists/RequestList.asp> You may order a site-specific species list from the Oregon Natural Heritage Information Center: <http://oregonstate.edu/ornhic/data-request.html>. The process takes about 10 working days and costs a minimum of \$65.

For NOAA Fisheries, please visit this website to determine the location of listed species: <http://www.streamnet.org/> (click “Interactive Mapper”)

No: STOP here. The project will have No Effect on listed or proposed species, and designated or proposed critical habitat. Consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries is not required. Record your determination of no effect and maintain this documentation in your ERR.

Yes: The project may affect listed or proposed species, or designated or proposed critical habitat. Consultation with the USFWS and/or NOAA Fisheries may be required.

Working Toward Recovery: The Endangered Species Act requires that all federal agencies utilize their authorities to help conserve listed species. Therefore, as responsible entities, you are encouraged to minimize the effects of your actions on listed species, designated critical habitat and habitat identified in endangered species recovery plans. For your activities, you are especially encouraged to minimize your action's contribution to water quality degradation from point and non-point discharges, and water quantity alteration due to increased impervious surfaces. Information on low impact development can be found at <http://www.epa.gov/nps/lid/lidlit.html>

***DISCLAIMER:** This document is intended as a tool to help grantees and HUD staff complete NEPA requirements. This document is subject to change. This is not a policy statement, and the Endangered Species Act and associated regulations take precedence over any information found in this document.*

Questions concerning environmental requirements relative to HUD programs can be addressed to Deborah Peavler-Stewart (206) 220-5414 or Sara Jensen (206) 220-5226.

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