



United States Department of the Interior

U.S. FISH AND WILDLIFE SERVICE
Anchorage Fish and Wildlife Conservation Office
4700 BLM Road
Anchorage, Alaska 99507



In Reply Refer to:
FWS/IR11/AFWCO

January 28, 2021

Mr. Brian Sturdivant
Regional Environmental Officer
909 First Ave, Suite 260
Seattle, Washington 98104-1000

Subject: Endangered Species Act Section 7 Consultation for Housing and Urban Development community upgrades in Alaska. (07CAAN00-2021-I-0095 2020)

Dear Mr. Sturdivant:

Thank you for requesting consultation with the U.S. Fish and Wildlife Service (Service), pursuant to section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq., as amended; ESA) by correspondence received January 10, 2021. The U.S. Department of Housing and Urban Development (HUD) assists with projects across the state of Alaska. This programmatic approach (programmatic) is to be used when making Endangered Species Act (ESA)-determinations for a broad suite of projects and their effects on federally threatened and endangered species and their designated critical habitats (Table 1, enclosed).

In Alaska, the Service has two Fish and Wildlife Conservation Offices (FWCO) responsible for section 7 consultations under the ESA (Figure 1, enclosed). The Fairbanks FWCO is responsible for the interior, northwestern, and far northern portions of Alaska. The Anchorage FWCO is responsible for the Aleutian Islands, south-western and south-central Alaska to the Yakutat forelands, and south-east Alaska and the protected waters thereof.

Species Protected Under ESA

A complete list of federally-listed threatened and endangered species and their designated critical habitats found in Alaska is provided in Table 2, enclosed.

Procedure for Section 7 Determination

Section 7(a) of the ESA directs all Federal agencies to conserve species listed as threatened or endangered. Those agencies, in consultation with the Service, must ensure that their actions will not jeopardize the continued existence of any ESA-listed species. Before starting an action, the Federal agency, or their non-Federal representative, obtains a list of threatened, endangered,

proposed, and candidate species and their designated critical habitat that may be present in the project action area. Based on its analysis, the Federal agency, or their non-Federal representative, makes one of three determinations of effect for listed species:

- “**No effect**” is the appropriate conclusion if the action agency determines the proposed action will not affect a listed species or designated critical habitat. If a “**no effect**” determination is made, the lead Federal agency or their non-Federal representative is not required to contact the Service for concurrence.
- “**May affect, but is not likely to adversely affect**” is the appropriate conclusion when an action agency determines the proposed action may result in an effect to listed species or critical habitat, but that effect is expected to be discountable or insignificant, or completely beneficial. Beneficial effects are contemporaneous positive effects without any adverse effects to the species or critical habitat. Insignificant effects relate to the size of the impact and should never reach the scale where take¹ occurs. Discountable effects are those that are extremely unlikely to occur. These are cases when, based on best judgement, a person would not 1) be able to meaningfully measure, detect, or evaluate insignificant effects, or 2) expect discountable effects to occur. If a “**may affect, not likely to adversely affect**” determination is made, the Federal agency or their non-Federal representative should seek written concurrence from the Service that the action “**is not likely to adversely affect**” listed species or designated critical habitat.
- “**May affect, is likely to adversely affect**” is the appropriate conclusion when the action agency determines it is likely that any adverse effect to listed species or critical habitat may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions, and the effect is not discountable, insignificant, or beneficial. A determination of “**is likely to adversely affect**” requires formal consultation.

The Service has worked with HUD to identify projects most commonly undertaken in rural communities that lend themselves to the programmatic framework for section 7 consultation. In order to assist HUD or the Responsible Entity² (RE) in making their section 7 determination for each of their projects, the Service developed a series of questions, with additional section 7 guidance based on the answer to these questions. Use the following series of questions to assist you in making a determination of affect or seek further consultation outside of this programmatic.

Regardless of HUD or the RE’s section 7 determination, HUD regulations requires maintaining a complete record of evaluation in the environmental review record.

¹ **Take** as defined under the ESA means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct."

² HUD regulations at 24 CFR 58 allow the assumption of authority to perform the environmental reviews by **Responsible Entities**, which are units of general local government, such as a town, village, city, county, Tribe, or State. The responsible entity is responsible for the scope and content of the review and making the finding. The certifying officer of the responsible entity, usually the mayor, signs the review and takes legal responsibility for the review.

1. **Is the project located within a community outside the range of listed or candidate species or within designated critical habitat?** (Review Table 3, enclosed, and choose the appropriate response below).

Yes, the project is in a location listed in Table 3 and is therefore outside the range of listed species and outside the boundaries of any designated critical habitat. If no listed species or designated critical habitat are present, it is reasonable for HUD/RE to make a determination the project will have “**no effect**” on listed species or designated critical habitat. For projects that will have no effect on listed species or critical habitat, there is no need to consult with the Service. Based on your determination of “**no effect**,” you have fulfilled your section 7 requirements.

No, the project is not in a location listed in Table 3 (go to question 2).

2. **The project location is not listed in Table 3, therefore, it is within the range of listed species. Depending on the location of the community where the project occurs, it may require further consultation. Is the project located in a community north of 69.9° 00’ N latitude on the North Slope of Alaska?** (Choose the appropriate response below.)

Yes, the project occurs in the community of **Atqasuk, Kaktovik, Nuiqsut, Point Lay, Utqiagvik (Barrow), or Wainwright** and is therefore located north of 69.9° 00’ N latitude on the North Slope of Alaska. Projects in these locations have the potential to require wetland fill, and cumulative effects of small-scale routine actions upon threatened or endangered species may occur in these areas. The Service recommends you request individual section 7 consultation for projects in these areas with the Fairbanks FWCO (Table 4, enclosed).

No, the project does not occur in **Atqasuk, Kaktovik, Nuiqsut, Point Lay, Utqiagvik (Barrow), or Wainwright** and is therefore located south of 69.9° 00’ N latitude on the North Slope of Alaska (go to question 3).

3. **Will the project take place outside of the May through September timing window for nesting listed eiders?** (Choose the appropriate response below.)

Yes, the project occurs outside of the specified timing window (May through September). Therefore, you can reasonably make a determination the project “**may affect, but is not likely to adversely affect**” listed species or critical habitat. In such instances, the Service concurs with your “**may affect, but not likely to adversely affect**” determination, because we expect few, if any, listed species to be present. After HUD or the RE submits the required reporting form, both HUD and the Service have completed their section 7 requirements and there is no need for further consultation.

No, the project does not occur outside of the specified timing window (May through September) (go to question 4).

4. **Does the project occur within the existing village footprint?** *The Service defines the existing village footprint as all areas of a villages existing road network and all areas within a 200 meter buffer of existing village structures and all connected outlying, existing development.*

Yes, the project occurs within the village footprint as defined. Listed species are not expected to be found within the village footprint. Therefore, you can reasonably make a determination the project “**may affect, but is not likely to adversely affect**” listed species or critical habitat. In such instances, given the project meets the criteria listed above, the Service concurs with your “**may affect, but not likely to adversely affect**” determination. After HUD or the RE submits the required reporting form, both HUD and the Service have completed their section 7 requirements and there is no need for further consultation.

No, the project does not occur within the village footprint (go to step 5).

5. **Depending on the nature of the project, it may require further consultation. Will new groundbreaking activities (specifically gravel fill or gravel pad fill) take place?**

Yes, new groundbreaking or ground disturbance activities may occur as part of the project proposal (e.g., gravel fill or gravel pad fill). The Service recommends you request individual section 7 consultation for projects in these areas with the appropriate FWCO (see Figure 1 and Table 4).

No, new groundbreaking activities such as gravel fill or new gravel pad construction will not occur as part of the project proposal (e.g., gravel fill or gravel pad construction). Therefore, you can reasonably make a determination the project “**may affect, but is not likely to adversely affect**” listed species or critical habitat. In such instances, given the project meets the criteria listed above, the Service concurs with your “**may affect, but not likely to adversely affect**” determination. After HUD or the RE submits the required reporting form, both HUD and the Service have completed their section 7 requirements and there is no need for further consultation.

In the event your project does not meet any of the criteria discussed above, you should request an individual section 7 consultation with the appropriate FWCO (see Figure 1 and Table 4). It is likely that further review of your project will still result in a determination that the project “**may affect, but is not likely to adversely affect**” listed species. In such cases, the section 7 consultation for the project will remain informal and relatively simple.

In the rare case where a project “**may effect, is likely to adversely affect**” listed species, and formal consultation is required, you should prepare a Biological Assessment (BA) prior to initiating consultation. A Biological Assessment contains the following elements: 1) *project description*, 2) *site specific information*, 3) *effects of the action*, 4) *anticipated incidental take*, 5) *conservation measures*, and 6) *a preliminary effects determination*.

For an explanation of these elements please refer to:

<https://www.fws.gov/alaska/fisheries/endangered/consultation.htm>
<https://www.fws.gov/endangered/esa-library/pdf/Attachment-4.pdf>
https://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf

You may wish to contact the appropriate FWCO for technical assistance in your effects determination. The appropriate office can assist you in determining your need for a BA. Please see Figure 1 and Table 4 for contact information.

Additional Conservation Recommendations

The Service recommends the following measures to reduce or minimize negative effects to threatened or endangered species in areas where they occur. Eiders may be attracted to lights on or near the coastline, especially at night or during periods of low visibility.

- To avoid attracting birds towards landward structures, to the maximum extent practicable (without impairing health and safety), projects should use down-shielding lights to reduce visibility and possible attraction of birds in flight for projects or activities in communities located within 200 meters of the Alaska coastline or other waterbody.
- To prevent birds from colliding with power lines, to the maximum extent practicable, transmission lines and guy wires should be fitted with bird deterrents.

Required Reporting

Use of this guidance requires HUD or the REs to submit the online programmatic reporting form³ each time a **may affect, but not likely to adversely affect** determination was reached using this programmatic. The form may also be submitted for **no effect** determinations if you would like proof of coordination with Service for your records. The purpose of the reporting is to inform future renewals and management of section 7 programmatic consultations.

The online form requires HUD or the RE to provide:

- The name of the HUD office or responsible entity completing the consultation, as well as contact information
- Community/village location where the project occurred
- Project type (select one of the types listed in Table 1 of this document)
- A description of the project and all notable actions that will occur under this programmatic
- The presence or absence of any listed species
- The effects determination reached through this programmatic

³ Access the reporting form at:

<https://forms.office.com/Pages/ResponsePage.aspx?id=urWTBhhLe02TQfMvQApUID22111s5RtDvPaFu2dtOO5UM1BBMUdRSjFXSkVEN0ISTlgwRDZHTTdDWi4u>

Once the form has been submitted, the respondent will receive an email with a copy of the information they entered. Please save this email response as proof of submitting the required report. If you have any questions or if any notable interactions with wildlife or listed species occur during the project's completion, email Ms. Sabrina Farmer (sabrina_farmer@fws.gov). Please include the consultation number "07CAAN00-2021-I-0095 2020" in the subject line of any inquiries.

Reinitiation

This programmatic section 7 consultation addressing municipal construction activities for HUD assisted projects is valid through December 2025. However, if new species are listed that may be affected by projects covered under this programmatic consultation or additional information on listed or proposed species becomes available, then this programmatic consultation should be reinitiated. After December 2025, HUD will contact the staff at the Anchorage FWCO for programmatic review at (907) 271-1467.

This guidance relates only to federally listed or proposed species and/or designated or proposed critical habitat under jurisdiction of the Service. It does not address species under the jurisdiction of the National Marine Fisheries Service, or other legislation or responsibilities under the Fish and Wildlife Coordination Act, Migratory Bird Treaty Act, Marine Mammal Protection Act, Clean Water Act, National Environmental Policy Act, or Bald and Golden Eagle Protection Act.

Thank you for your cooperation in meeting our joint responsibilities under the ESA and protecting our fish and wildlife resources. If you have any questions, please contact Endangered Species Biologist Ms. Sabrina Farmer at (907) 271-2788 or sabrina_farmer@fws.gov, and refer to consultation number 07CAAN00-2021-I-0095 2020.

Sincerely,

Douglass M. Cooper
Branch Chief, Ecological Services

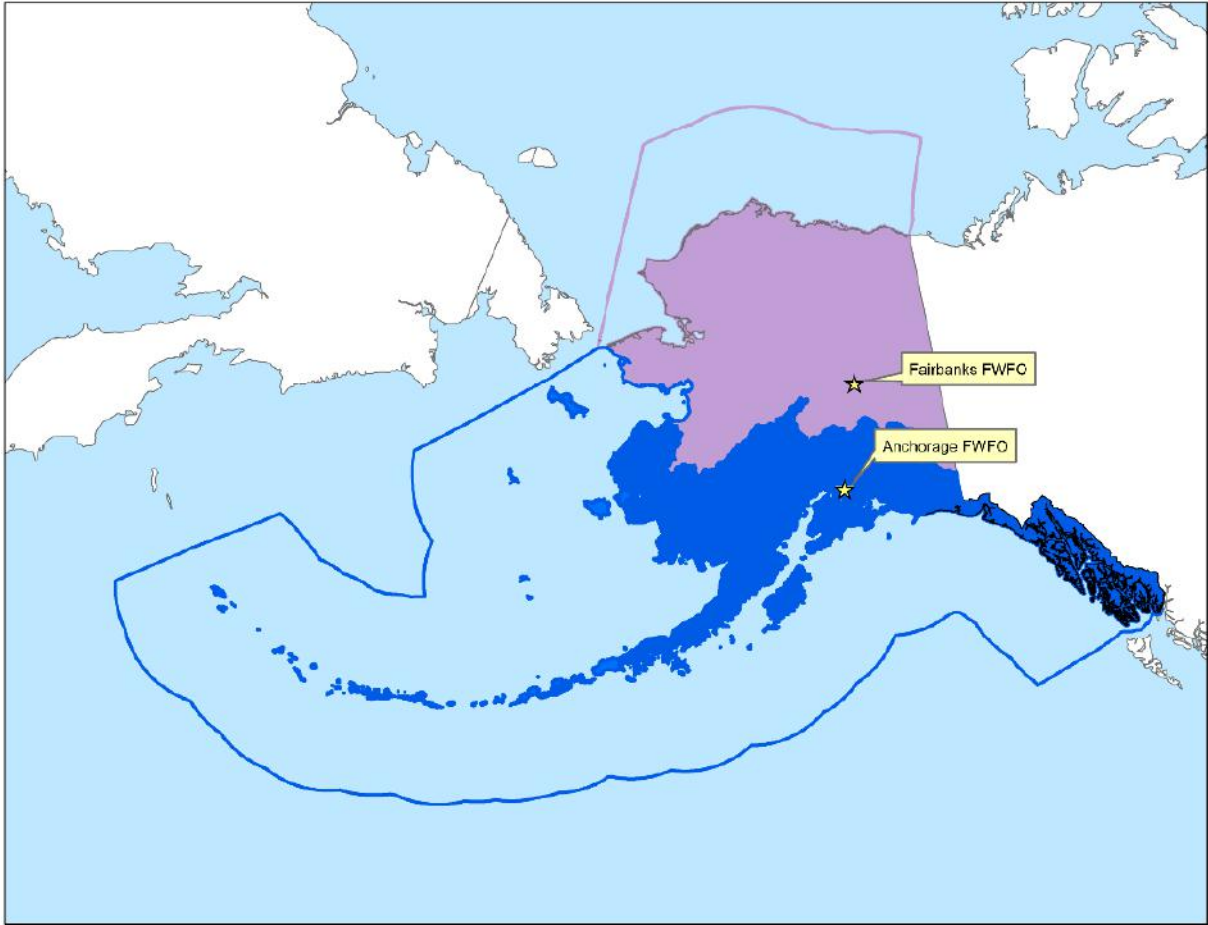


Figure 1. Areas of jurisdiction for each U.S. Fish and Wildlife Service Fish and Wildlife Conservation Office in Alaska.

Table 1. Projects likely to have limited effects on listed species and their critical habitat.

Project Type	Project Description
Community buildings (water/wastewater treatment plants, washeterias, lift stations), tribal offices, multi-purpose centers, clinics, hospitals, health facilities, daycare facilities, housing (single family and multifamily)	New construction or repair, acquisition of housing/community buildings, refinance, rehabilitation, replace, upgrade or modify existing buildings, boardwalks, decks, steps, landings, room additions, holding tanks and new construction of gravel pads within the existing village footprint*
Energy	Install waste heat recovery connection between power plant and public facilities (trenched or aboveground water and electrical lines); install new or rehabilitate thermosiphons for active cooling (excavate and retrofit); install biomass boiler in prefab building on new or existing pad and piping (trenched or aboveground); install solar photovoltaic systems on existing structures within the existing village footprint* or adjacent to existing facilities
Erosion and Permafrost Mitigation	Repair and rehabilitate footings and foundations; fill and contour soils for proper drainage and revegetate; remove and replace gabion baskets; install new or rehabilitate thermosiphons for active cooling within the existing village footprint* or adjacent to existing facilities*
Fuel Tanks	New or rehabilitate, replace, repair, or upgrade fuel tanks for residential and public facilities; new foundation, gravel pad, and containment basin within the existing village footprint*
Health Facilities	Replace or rehabilitate existing building, construct gravel pads and new buildings or building additions, provide buried electric power, sewer and water service lines; upgrade fire alarm, lighting, ventilation or mechanical systems within the existing village footprint*
<p>* Existing Village Footprint: All areas within a villages existing road network and all areas within a 200 m buffer of existing village structures and all connected outlying, existing development. If a new road is constructed to access a site and extends beyond the existing village perimeter, then the site is considered <u>outside</u> the existing village footprint and <u>not covered</u> by this programmatic section 7 consultation.</p>	

Table 1 (continued). Projects likely to have limited effects on listed species and their critical habitat.

Roads and boardwalks	New or upgrade, replace, or maintain within the existing village footprint*
Sanitation	Water and sewer lines and utilidors new/replace/repair (mains, distribution and transmission, trenched or aboveground); backwash basins (Water Treatment Plant adjacent); lift stations (new, repair/replace); septic systems (excavate, bedding, install septic tank and drain field, backfill, revegetate); potable water wells (drill or excavate) for residential, commercial and public facilities within the existing village footprint*
Sewage Lagoon Upgrades	Expand, repair, rehabilitate, or fence existing facility
Water Reservoir	Non-fenced to allow flightless birds to enter and exit; within existing village footprint* Cleanout sediment and repair/upgrade existing water impoundments
Water Storage Tank	Rehabilitate, replace, and new construction; new foundation within the existing village footprint*
<p>* Existing Village Footprint: All areas within a villages existing road network and all areas within a 200 m buffer of existing village structures and all connected outlying, existing development. If a new road is constructed to access a site and extends beyond the existing village perimeter, then the site is considered <u>outside</u> the existing village footprint and <u>not covered</u> by this programmatic section 7 consultation.</p>	

Table 2. Threatened and endangered species and their designated critical habitats in Alaska.

Species and Status	Critical Habitat?	Lead Office	Range in Alaska
Endangered			
Short-tailed albatross <i>(Phoebastria albatrus)</i>	no	Anchorage	U.S. Territorial waters, Gulf of Alaska, Aleutian Islands, Bering Sea Coast, Japan, Russia, high seas
Eskimo curlew <i>(Numenius borealis)</i>	no	Fairbanks	Has not been reported in Alaska since 1987
Aleutian shield fern <i>(Polystichum aleuticum)</i>	no	Anchorage	Adak Island
Threatened			
Spectacled eider <i>(Somateria fischeri)</i>	YES	Fairbanks	Western and Northern Alaska (coastal)
Steller's eider <i>(Polysticta stelleri)</i>	YES	Fairbanks	Southwestern, Western and Northern Alaska
Northern sea otter (Southwest Alaska DPS) <i>(Enhydra lutris kenyoni)</i>	YES	Anchorage	Aleutian Islands, Alaska Peninsula, Kodiak Island
Polar bear <i>(Ursus maritimus)</i>	YES	Fairbanks	Sea ice and coastline of Chuckchi and Beaufort seas
Wood bison <i>(Bison bison athabascaae)</i>	no	Anchorage	Lower Innoko / Yukon River areas

Table 3. Communities in Alaska that are outside the range of listed species and critical habitats.

Akiachak	Crooked Creek	Hyder
Akiak	Cube Cove	Igiugig
Alatna	Delta Junction	Juneau
Alcan	Denali Borough	Kake
Aleknagik	Dillingham	Kalskag
Algaaciq	Dora Bay	Kaltag
Allakaket	Dot Lake	Kasaan
Ambler	Eagle	Kasigluk
Anaktuvuk Pass	Eagle Village	Kasilof
Anchorage	Edna Bay	Kennicott
Anderson	Eek	Kenny Lake
Angoon	Eielson AFB	Kern
Aniak	Eklutna	Ketchikan
Annette	Ekuk	King Island
Annette Island	Ekwok	Klawock
Anvik	Ester	Klukwan
Arctic Village	Evansville	Kobuk
Atmautluak	Fairbanks	Kokhanok
Beaver	Ferry	Koliganek
Bethel	Flat	Koyukuk
Bettles	Fort Greely	Kupreanof
Big Lake	Fort Yukon	Kwethluk
Birch Creek	Freshwater Bay	Labouchere Bay
Bird	Gakona	Lake Minchumina
Cantwell	Galena	Larsen Bay
Central	Game Creek	Lignite
Chalkyitsik	Girdwood	Lime Village
Chickaloon	Glennallen	Livengood
Chicken	Goodnews Bay	Long Island
Chignik Lake	Grayling	Lower Kalskag
Chuathbaluk	Gulkana	Lower Tonsina
Chugiak	Harding Lake	Lutak
Circle	Healy	Manley Hot Springs
Circle Hot Springs	Healy Lake	Manokotak
Clarks Point	Holbart Bay	Marshall
Coffman Cove	Holy Cross	Mary's Igloo
Copper Center	Hope	McCarthy
Cordova	Houston	McGrath
Council	Huslia	McKinly Park
Craig	Hydaburg	Mekoryuk

Table 3 (continued). Communities in Alaska that are outside the range of listed species and critical habitats.

Mendeltna	Petersville	Stony River
Mentasta	Pile Bay	Susitna
Mentasta Lake	Pilot Station	Takotna
Metlakatla	Pitkas Point	Talkeetna
Meyers Chuck	Point Baker	Tanacross
Minto	Polk Inlet	Tanana
Moose Creek	Poorman	Tatitlek
Moose Pass	Port Alexander	Tazlina
Mosquito Lake	Port Alsworth	Telida
Mountain Village	Port Clarence	Tenakee Springs
Napaimute	Port Protection	Tetlin
Napakiak	Portage	Thorne Bay
Napaskiak	Portage Creek	Togiak
Naukati	Quinhagak	Tonsina
Naukati West	Rampart	Trapper Creek
Nenana	Red Devil	Tuluksak
New Stuyahok	Rowan Bay	Tuntutuliak
Newhalen	Ruby	Twin Hills
Nikolaevsk	Russian Mission	Two Rivers
Nikolai	Saint Mary	Tyonek
Nondalton	Salcha	Ugashik
North Pole	Saxman	Upper Kalskag
Northway	Seward	Valdez
Northway Junction	Shageluk	Venetie
Northway Village	Shungnak	Wasilla
Nulato	Sitka	Whale Pass
Nunapitchuk	Skagway	White Mountain
Ophir	Slana	Whitestone Logging
Oscarville	Sleetmute	Whittier
Palmer	Soldotna	Willow
Paxson	Solomon	Wiseman
Pedro Bay	St Mary's	Wrangell
Pelican	Stevens River	Yakutat
Petersburg	Stevens Village	

Table 4. Consultation contact information for the U.S. Fish and Wildlife Service.

Office	Address	Phone Number	Fax Number	Email
Fairbanks Fish and Wildlife Conservation Office (FFWCO)	101 12 th Ave. Room 110 Fairbanks, AK 99701	(907) 456-0203	(907) 456-0208	ak_fisheries@fws.gov
Anchorage Fish and Wildlife Conservation Office (AFWCO)	4700 BLM Rd. Anchorage, AK 99508	(907) 271-2888	(902) 271-2786	