Federal Energy Regulatory Commission

§ 380.13 Compliance with the Endangered Species Act.

(a) Definitions. For purposes of this section:

(1) Listed species and critical habitat have the same meaning as provided in 50 CFR 402.02.

(2) Project area means any area subject to construction activities (for example, material storage sites, temporary work areas, and new access roads) necessary to install or abandon the facilities.

(b) Procedures for informal consultation—(1) Designation of non-Federal representative. The project sponsor is designated as the Commission’s non-Federal representative for purposes of informal consultations with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) under the Endangered Species Act of 1973, as amended (ESA).

(2) Consultation requirement. (i) Prior to the filing of the environmental report specified in §380.12, the project sponsor must contact the appropriate regional or field office of the FWS or the NMFS, or both if appropriate, to initiate informal consultations, unless it is proceeding pursuant to a blanket clearance issued by the FWS and/or NMFS which is less than 1 year old and the clearance does not specify more frequent consultation.

(ii) If a blanket clearance is more than 1 year old or less than 1 year old and specifies more frequent consultations, or if the project sponsor is not proceeding pursuant to a blanket clearance, the project sponsor must request a list of federally listed or proposed species and designated or proposed critical habitat that may be present in the project area, or provide the consulted agency with such a list for its concurrence.

(iii) The consulted agency will provide a species and critical habitat list or concur with the species list provided within 30 days of its receipt of the initial request. In the event that the consulted agency does not provide this information within this time period, the project sponsor may notify the Director of the Office of Energy Projects and continue with the remaining procedures of this section.

(3) End of informal consultation. (i) At any time during the informal consultations, the consulted agency may determine or confirm:

the entire process flow system, including maps, materials, and energy balances.

(11) Provide engineering information on the plant’s electrical power generation system, distribution system, emergency power system, uninterruptible power system, and battery backup system.

(12) Identify of all codes and standards under which the plant (and marine terminal, if applicable) will be designed, and any special considerations or safety provisions that were applied to the design of plant components.

(13) Provide a list of all permits or approvals from local, state, Federal, or Native American groups or Indian agencies required prior to and during construction of the plant, and the status of each, including the date filed, the date issued, and any known obstacles to approval. Include a description of data records required for submission to such agencies and transcripts of any public hearings by such agencies. Also provide copies of any correspondence relating to the actions by all, or any, of these agencies regarding all required approvals.

(14) Identify how each applicable requirement will comply with 49 CFR part 193 and the National Fire Protection Association 59A LNG Standards. For new facilities, the siting requirements of 49 CFR part 193, subpart B, must be given special attention. If applicable, vapor dispersion calculations from LNG spills over water should also be presented to ensure compliance with the U.S. Coast Guard’s LNG regulations in 33 CFR part 127.

(15) Provide seismic information specified in Data Requirements for the Seismic Review of LNG facilities (NBSIR 84–2833, available from FERC staff) for facilities that would be located in zone 2, 3, or 4 of the Uniform Building Code Seismic Map of the United States.

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(A) That no listed or proposed species, or designated or proposed critical habitat, occurs in the project area; or

(B) That the project is not likely to adversely affect a listed species or critical habitat;

(ii) If the consulted agency provides the determination or confirmation described in paragraph (b)(3)(i) of this section, no further consultation is required.

(4) Potential impact to proposed species.

(i) If the consulted agency, pursuant to informal consultations, initially determines that any species proposed to be listed, or proposed critical habitat, occurs in the project area, the project sponsor must confer with the consulted agency on methods to avoid or reduce the potential impact.

(ii) The project sponsor shall include in its proposal, a discussion of any mitigating measures recommended through the consultation process.

(5) Continued informal consultations for listed species.

(i) If the consulted agency initially determines, pursuant to the informal consultations, that a listed species or designated critical habitat may occur in the project area, the project sponsor must continue informal consultations with the consulted agency to determine if the proposed project may affect the species or designated critical habitat. These consultations may include discussions with experts (including experts provided by the consulted agency), habitat identification, field surveys, biological analyses, and the formulation of mitigation measures. If the provided information indicates that the project is not likely to adversely affect a listed species or critical habitat, the consulting agency will provide a letter of concurrence which completes informal consultation.

(ii) The project sponsor must prepare a Biological Assessment unless the consulted agency indicates that the proposed project is not likely to adversely affect a specific listed species or its designated critical habitat. The Biological Assessment must contain the following information for each species contained in the consulted agency’s species list:

(A) Life history and habitat requirements;

(B) Results of detailed surveys to determine if individuals, populations, or suitable, unoccupied habitat exists in the proposed project’s area of effect;

(C) Potential impacts, both beneficial and negative, that could result from the construction and operation of the proposed project, or disturbance associated with the abandonment, if applicable; and

(D) Proposed mitigation that would eliminate or minimize these potential impacts.

(iii) All surveys must be conducted by qualified biologists and must use FWS and/or NMFS approved survey methodology. In addition, the Biological Assessment must include the following information:

(A) Name(s) and qualifications of person(s) conducting the survey;

(B) Survey methodology;

(C) Date of survey(s); and

(D) Detailed and site-specific identification of size and location of all areas surveyed.

(iv) The project sponsor must provide a draft Biological Assessment directly to the environmental staff of the Office of Energy Projects for review and comment and/or submission to the consulted agency. If the consulted agency fails to provide formal comments on the Biological Assessment to the project sponsor within 30 days of its receipt, as specified in 50 CFR 402.120, the project sponsor may notify the Director, OEP, and follow the procedures in paragraph (c) of this section.

(v) The consulted agency’s comments on the Biological Assessment’s determination must be filed with the Commission.

(c) Notification to Director. In the event that the consulted agency fails to respond to requests by the project sponsor under paragraph (b) of this section, the project sponsor must notify the Director of the Office of Energy Projects. The notification must include all information, reports, letters, and other correspondence prepared pursuant to this section. The Director will determine whether:

(1) Additional informal consultation is required;

(2) Formal consultation must be initiated under paragraph (d) of this section; or
§ 380.15 Siting and maintenance requirements.

(a) Avoidance or minimization of effects. The siting, construction, and maintenance of facilities shall be undertaken in a way that avoids or minimizes effects on scenic, historic, wildlife, and recreational values.

(b) Landowner consideration. The desires of landowners should be taken into account in the planning, locating, clearing, and maintenance of rights-of-way and the construction of facilities on their property, so long as the result is consistent with applicable requirements of law, including laws relating