



JAN 20 AM 10:16

330 West Broadway
Frankfort, KY 40601
PH. (502) 223-6720
FAX (502) 223-6735

Kentucky Division Office
Jose Sepulveda, Division Administrator

January 17, 2006

Mr. William Nighbert, Acting Secretary
Kentucky Transportation Cabinet
200 Mero Street, Room 613
Frankfort, Kentucky 40622

Attn: David Waldner

Dear Mr. Nighbert:

Subject: Timing of Section 7 Consultation

Recently there have been discussions between DEA staff and FHWA on when Biological Assessments (BA) are required to be completed. The following will establish the timelines in which these studies must be completed and coordinated through the United States Fish and Wildlife Service (USFWS).

PCE, CE Level 1, CE Level 2, and CE Level 3

Biological investigations are typically conducted between the months of April through October leaving a very narrow window to get all projects completed during the year. Projects classified as a PCE, CE Level 1, or CE Level 2 are not considered major federal actions and typically can be processed within twelve months. Due to the short study season, and the rapid processing of these types of documents, it can be problematic at times to meet letting schedules thus delaying projects.

It is our recommendation that all studies be completed as early in the project development process as possible, preferably prior to environmental document approval; however, because these types of projects typically have minor impacts to species and/or their habitat, BA's and coordination with the USFWS may be deferred until request for construction authorization.

EA/FONSI or EIS/ROD Level Documents

Projects classified as an EA or EIS are considered major federal actions and require base studies to be completed during their development. These studies are used in aiding the selection of a build alternative. Once the alternative has been selected a FONSI or EIS document is developed and further, more intensive, studies are conducted to develop a BA. It is our recommendation that all studies be completed as early in the project development as possible, preferably prior to environmental document approval; however, because the Kentucky Transportation Cabinet has completed the biological investigations and are aware of the potential to impact the species, final BA completion and coordination with USFWS may be deferred. For projects where EIS level documents are developed the BA must be completed prior to the issuance of the ROD. For projects where FONSI level documents are developed the BA must be completed prior to request for Right of way authorization.

Timing of Section 7 Milestones

Environmental Doc. Type	Habitat Assessment	Biological Assessment
PCE, CE Level 1- 2	Complete as early in development as possible after project details are sufficiently defined to adequately evaluate project impacts to species for selected alternative.	Preferably complete prior to environmental document approval, ROW authorization, and ROW purchase. MUST be completed prior to request for construction authorization.
CE Level 3	Complete as early in development as possible after project details are sufficiently defined to adequately evaluate project impacts to species for selected alternative.	<p>For projects meeting defined CE Level 3 criteria (with no exceptions), preferably complete prior to environmental document approval, ROW authorization, and ROW purchase. MUST be completed prior to construction authorization request.</p> <p>For projects requiring FHWA consultation to determine if a project will be processed as a CE Level 3, KYTC must document potential for project to impact species being considered for area and recommend appropriate schedule for addressing all Section 7 consultation requirements. Completion schedule (prior to ROW authorization or Construction authorization) shall be at the discretion of FHWA.</p>
EA/FONSI	Complete as early in development as possible after project details are sufficiently defined to adequately evaluate project impacts to species for selected alternative.	Consultation must be completed prior to request for ROW authorization.
DEIS/FEIS/ROD	Complete as early in development as possible after project details are sufficiently defined to adequately evaluate project impacts to species for selected alternative.	Consultation must be completed prior to issuance of the ROD

If you have any questions regarding the timing of Section 7 consultation, please feel free to me at (502) 223-6742.

Sincerely yours,



Anthony Goodman
Environmental Program Manager

Enclosure

cc: David Waldner (KYTC)
Lee Andrews (USFWS)

