

U.S. Fish and Wildlife Service

Agency Address / Web site

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Authority

Description

Fish and Wildlife Coordination Act of 1958
 Federal Endangered Species Act of 1973
 National Environmental Policy Act of 1969
 Floodplains Protection
 Wetland Protection
 Federal Migratory Bird Treaty Act
 Implementation of the Federal Advisory
 Committee Act

Code

16 USC 661-666
 16 USC 1531-1543
 Pub. L. No. 91-190, 42 U.S.C.
 EO 11988
 EO 11990
[50 CFR 13](#) and [50 CFR 21](#)
[50 CFR 510](#)

See Subject Guidance for Park and Recreation Areas Section 4 (f) of the DOT Act
 Environmental Stewardship and Transportation E.O. 13274
 Infrastructure Project Reviews

[United States Code: Main Page](#) for viewing U.S. Codes above.

[Executive Orders: Main Page](#) for viewing Presidential Executive Orders.

Agency Role(s)

The U.S. Fish and Wildlife Service is the principal federal agency responsible for the protection, conservation, and enhancement of fish, plant, and wildlife as well as their habitats for the continuing benefit and enjoyment of the American people.

This agency enforces federal wildlife laws, manages migratory bird populations, restores nationally significant fisheries, conserves and restores fish and wildlife habitat such as wetlands, administers the Endangered Species Act, and helps foreign governments with their conservation efforts. The FWS also administers a number of grant programs that promote the restoration of fish and wildlife resources and their habitat on tribal and private lands.

The FWS encourages the design of transportation projects that provide the greatest value to the greatest number of people while avoiding or minimizing impacts to habitat and the disruption of the ecological processes that naturally sustain these areas.

The FWS provides technical information that enables the State Departments of Transportation and local transportation planning organizations develop alternatives with minimal environmental impacts through a streamlined environmental review process.

Aspects of FWS participation in transportation planning include:

- Provides Service involvement in statewide/metropolitan planning process or State Transportation Plans (STP);
- Gathers and shares information on current issues and events related to environmental protection and transportation planning;
- Identifies and promotes innovative practices that protect natural resources;
- Identifies and promotes innovative practices that streamline the environmental review process; and Promotes partnerships with other Federal, State, and local governments and non-governmental organizations to address the efforts above.

Agency Areas of Concern

Additional HPDP documentation to be considered:

- Excess Materials, Disposal of
- Floodplains
- Section 4(f)
- Stream and Water Body Modification
- Threatened and Endangered Species, Federal
- Threatened and Endangered Species, State
- Vegetation
- Water Quality
- Wetlands
- Wild and Scenic Rivers

Agreement(s)

Though not an agreement between agencies, Executive Order 13274 Environmental Stewardship and Transportation Infrastructure Project Reviews, provides stewardship in the nation's transportation system and streamlines the environmental review and development of transportation infrastructure projects.

Although the FWS is involved with wetlands, endangered species, and stream modifications within the state of Minnesota, any effects to lands controlled by the FWS, such as wildlife and waterfowl refuges are a primary concern to the agency.

Procedures / Requirements

For Class I (EIS) actions, the FWS receives our scoping and EIS documents and has an opportunity to comment and monitor on how we have addressed their concerns. FWS will be asked to be a cooperating agency when wetlands, endangered species or stream modification is an issue.

For Class II (CATEX) actions, the FWS receives selected Categorical Exclusions for review and comment. If a project involves wetlands, stream modification, endangered species impacts, floodplain impacts, and other unique impacts to areas of concern to FWS, they would receive a CATEX. If any problems are anticipated, informal coordination prior to sending the document, or a draft CATEX submittal, is usually appropriate.

For Class III (EA) actions, the EA is sent to FWS for review and comment. Early coordination prior to submittal of the documents is suggested when impacts are expected to aid in the evaluation of potential significance. Such significance may influence whether an EIS is needed, depending on context and level of intensity.

Appendix

(See following pages)

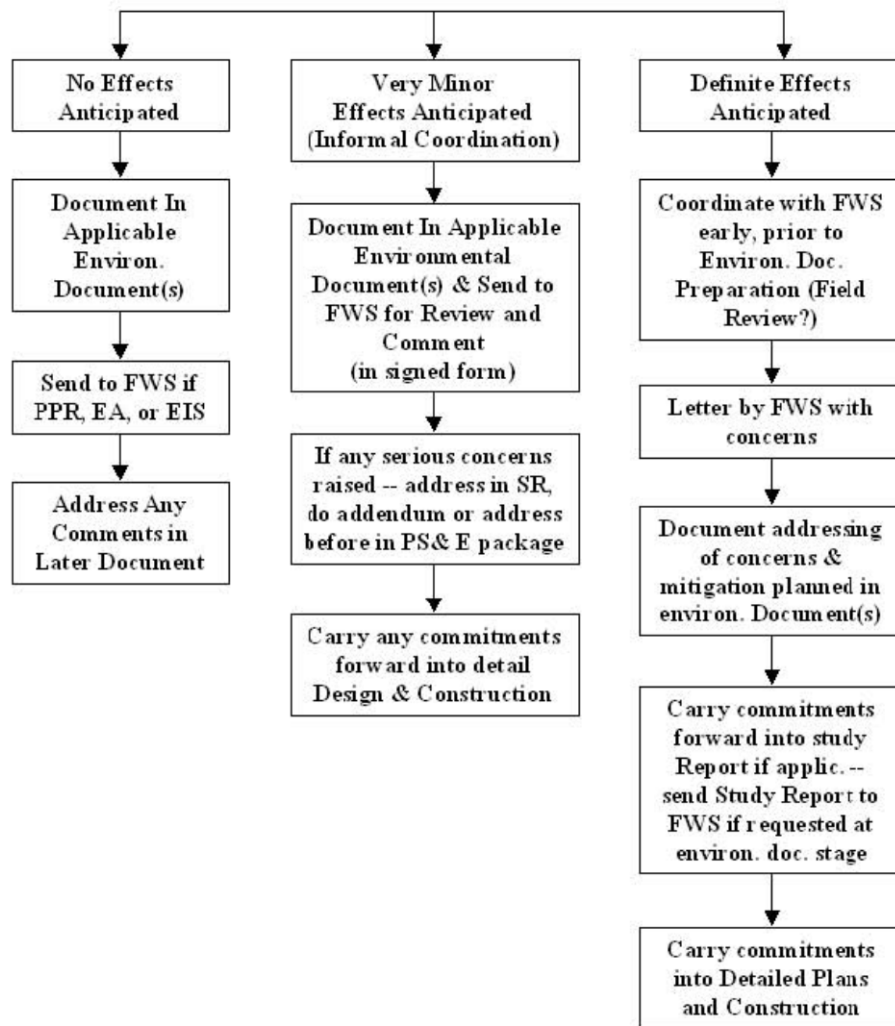
Appendix No. 1 [USFWS Coordination Process](#)

Appendix No. 2 [Swallow Procedure](#)

Appendix 1

USFWS Coordination Process

Early in Project Development Process,
Assess Potential For Fish or Wildlife
Impacts (Lakes, Streams, Wetlands,
Substantial Upland Habitat Effects,
Endangered Species)



Appendix 2

Swallow Procedure

Background:

Swallows are protected by the Federal Migratory Bird Treaty Act, and the destruction of swallows or their active nests is a misdemeanor punishable by a \$500 fine or a jail term. An "active" nest is one that contains eggs or young birds. Nests that are in the process of being constructed or nests that have been abandoned after a breeding season are not "active" nests.

Cliff swallows and barn swallows, along with a few other species of migratory birds, often build their nests on bridges or highway overpasses. Bank swallows tunnel into open sandy vertical surfaces near wetlands and streams and may try to take advantage of vertical surfaces in borrow sites or construction sites.

Under the regulations of the Federal Migratory Bird Treaty Act, depredation permits are required for the destruction of any active migratory bird nests. The U.S. Fish and Wildlife Service (USFWS) have formulated a policy that a permit for destruction of nests that are not active is not needed. All permits issued by the USFWS contain the requirement that any young swallows and eggs removed from the bridges must be turned over to a federally licensed rehabilitator for care and subsequent release (see section on depredation permits). The Minnesota DNR also has permit authority over the destruction or possession of protected wildlife. The DNR permits contain the same restrictions and requirements as the USFWS permits.

Avoidance and Minimization Measures:

The following options for dealing with swallows on bridges are acceptable to the USFWS and the DNR. The following measures should be identified in bridge removal and maintenance contracts, depending on how much responsibility is given to the contractor:

- 1) Bridge work may be performed outside of the nesting season, i.e., before May 15th or after September 1st. No permit is required for this activity.
- 2) Bridge work may be begun before May 15th and nest completion can be prevented by knocking down or hosing down the nests (at least three times a week) as they are being built. The success of this measure depends on the number of nests on a bridge. If the bridge contains only a few nests, the birds should be easily deterred from nesting. If the bridge contains a large number of nests, it is an indication that the site is very attractive to the birds and they will not be easily deterred from nesting. Preventing the birds from nesting by knocking down unfinished nests is acceptable to the USFWS, which considers this to be non-lethal harassment. No permits are required for this activity.
- 3) The portions of the bridge providing nesting sites (overhangs and ledges) may be temporarily covered with fabric or netting to prevent the birds from nesting (see Cliff Swallow bulletin in appendix). The entire underside of a bridge can be "diapered". For small bridges (over streams that do not carry canoe traffic) filter fabric reinforced with wire mesh can be suspended so that it hangs down from the side of the bridge to about a foot below the water line. When covering nesting sites it is crucial to seal off the entire area with a continuous barrier as the birds can enter through small openings in the netting. No permit is required for this activity. **Please note that netting and mesh may entangle some species of wildlife, especially snakes, so it should be completely removed from the project area once no longer needed.**
- 4) Another, more permanent, product that may be used to reduce swallow nesting on bridges, ledges, etc. are bird spikes.

5) Other preventative measures, such as sprays or chemicals, may be tried to discourage the birds from nesting, keeping in mind that water quality below the bridge should not be threatened. Such measures have not been officially proven to be effective, but they may work in specific cases.

Depredation Permits:

Applying for a depredation permit and complying with the requirements should be used as a **last-resort** option because the procedure is costly and can cause delays. Depredation permits should be applied for under the following circumstances:

- 1) If the project is scheduled to begin before the end of the nesting season, e.g., August 15th, and birds are still actively nesting on a bridge (see above).
- 2) If the minimization measures listed above fail to prevent birds from nesting on a bridge (see above).
- 3) If the bridge contains a small number of nests, (i.e., a small enough number for the federally licensed rehabilitator to be willing to provide the service of caring for the three to five nestlings that each nest may contain), the timing of bird work need not be restricted.

The two major steps involved in working with depredation permits are: a) obtaining the USFWS and DNR permits; and b) obtaining the services of a federally licensed rehabilitator.

1) Obtaining Permits: The permit applicant should be the party responsible for the bridge work, i.e., in most cases the contractor, in some cases the District (if the work is being done by Maintenance Personnel). The applicant must first contact USDA Wildlife Services to request form WS-37 (contact below); include project details and amount of removal. Once form WS-37 is received, the applicant should review Section E of [the USFWS application](#) for process instructions (<http://www.fws.gov/forms/3-200-13.pdf>). A copy of the USFWS application along with form WS-37 should be sent to USFWS (see application instructions for contact information), and another copy of both forms should be sent to MNDNR (contact below).

The USFWS maintains its records on a calendar year basis and would prefer that the permit applications be submitted in the same year for which the permits are being requested. The turn-around time for receiving the approved permits is approximately 15-30 days.

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2) Obtaining rehabilitator services: The USFWS and DNR permit issuers should be contacted to determine if there are any federally licensed rehabilitators in the project area. It is possible that the nearest rehabilitator may be hundreds of miles away. The network of rehabilitators was originally established to take care of limited numbers of orphaned or injured wildlife from the local area. The network, as it is presently set up, is neither able nor willing to commit to handling large numbers of young nestlings on a statewide basis. Most of the rehabilitators have full-time jobs from which they take time off to go and salvage the birds. Therefore the rehabilitators should be contacted at least several weeks in advance to make sure that their services will be available.

Bank Swallows and Vertical Surfaces:

At this point in time, this potential problem does not need to be addressed in the project documents since the potential for a swallow infestation cannot easily be predicted. The potential for a problem may not be known until borrow or construction activities actually begin. The Resident Engineers have been alerted to this issue and will respond accordingly. Avoidance is emphasized in cases where bank swallows have colonized vertical surfaces because the chances of rescuing birds from the tunnels are slim. The suggested measures to prevent swallows from nesting in bank are as follows:

- 1) Cover up the vertical surface while it is not being excavated.
- 2) Avoid having a vertical surface by leaving a slope at the excavation site.