

TVA & the Endangered Species Act



The Endangered Species Act (ESA) was passed by congress in 1973 with the purpose to protect and recover imperiled species and the ecosystems upon which they depend. As a federal agency, the Tennessee Valley Authority (TVA) is required by Section 7 of the ESA to ensure that any action taken by TVA is not likely to jeopardize the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of the critical habitat of the endangered or threatened species, through consultation with the United States Fish and Wildlife Services (USFWS). Over 180 plants and animals are listed in the TVA Power Service Area.

What review is needed for your project?

TVA must make a determination on whether the activity would affect a Federally-listed Threatened and Endangered (T&E) Species. If the activity would affect, then they must initiate either an informal or formal consultation with the USFWS.

What is a Consultation?

A Consultation as outlined in the ESA is the process of gaining approval of a project by the USFWS. The process includes all discussions, correspondence, etc.

What is an Informal Consultation?

An informal consultation is initiated with a letter to the USFWS when an activity is determined not likely to adversely affect. This is generally the determination if a species or habitat may exist on the site, but will either not be affected by the project, or certain avoidance and minimization measures would be adopted that would minimize the effect to no adverse affect on the species or habitat. If agreed to, the USFWS will respond with a letter of concurrence. Many times this agreement is based on mitigation measures, such as, timing restrictions, best management practices, etc.

What is different about a Formal Consultation?

A formal consultation initiates with a letter to the USFWS when it is determined that an activity may affect and is likely to adversely affect a Federally listed T&E Species or habitat. Through analysis, TVA prepares a Biological Assessment of impact.

The formal consultation concludes with the USFWS's issuance of a biological opinion (BO), which will state the opinion of the USFWS as to whether TVA's action is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat.

The BO will contain a statement that specifies the impacts on a species, reasonable and prudent measures that are necessary or appropriate to minimize impacts, and set the terms and conditions (which may include monitoring and reporting requirements) to constitute compliance.

Bat Programmatic Consultation

Through the consultation process TVA worked with the USFWS to address activities for certain projects that could potentially impact bats.

TVA & the Protection of Wetlands



The purpose of Executive Order (EO) 11990 is to “minimize the destruction, loss or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands”. To meet these objectives, the Order requires federal agencies, in planning their actions, to consider alternatives to wetland sites and limit potential damage if an activity affecting a wetland cannot be avoided. Wetlands are lowland areas that are inundated or saturated by surface or groundwater at a frequency that, under normal circumstances, supports a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. They tend to be highly productive areas that provide habitat for many species of plants, fish, and waterfowl.

What review is needed for your project?

For any project that may affect a wetland area, TVA is required to analyze the impacts. The environmental analysis should include an assessment of the impacts on wetlands and associated wildlife resulting from both construction and operation of the project. It should also include measures to minimize adverse impacts and avoid, to the fullest extent possible, drainage, filling or other disturbance of wetlands. Alternatives that would avoid new construction in wetlands must be studied. If the preferred alternative requires new construction in wetlands the analysis must demonstrate that there are no practicable alternatives to the use of the wetlands, and all practicable measures to minimize harm have been included in project planning. The US Army Corps of Engineers (USACE) or state agencies may require compensatory mitigation for unavoidable wetland impacts.

For more information:

Endangered Species

<https://www.fws.gov/endangered/>

Wetlands

<https://www.epa.gov/wetlands>

What is the Regulatory requirement for Protection of Wetlands?

Any TVA project that involves discharge of dredged or fill material to waters of the US, including wetlands, is subject to the Section 404 permitting process. The Section 404 permitting process was established under the Clean Water Act, Section 404 (33 U.S.C 1344) and is administered by the USACE and the respective state’s Section 401 permit. In general, the permitting program operates according to the principle of “no net loss of wetlands;” through a required sequence of options to avoid, minimize, enhance and compensate.

TVA is required to follow the “no net loss” directives under EO 11990, even when no USACE permit is required. This includes allowing for public comment on proposed project activities.