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Navigating the Threatened & Endangered Species Clearance Process

Clearance for species of concern can be a simple one-step screening, or it can involve a complex multi-step evaluation. Understanding the basic process and the time frame in which other project activities can proceed is important in developing an overall plan for completion of any construction project.

As with every project that requires a National Environmental Policy Act (NEPA) document, waterways encroachment permit (U.S. Army Corps of Engineers [USACE] Chapter 404, Pennsylvania Department of Environmental Protection [PADEP] Chapter 105), or other environmental document, clearance must be obtained for species of special concern. Generally known as threatened and endangered (T&E) species, species of special concern includes plants and animals that are regulated by state and federal agencies because their populations are in local, national, or global jeopardy. The U.S. Fish and Wildlife Service (USFWS) has regulatory authority at the federal level, while various agencies within different states maintain authority at the state and local levels.

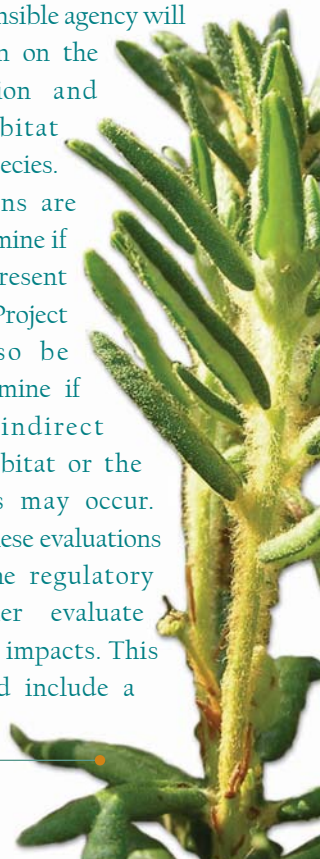
The *Myotis sodalis* (Indiana bat) is federally endangered.

Though each agency runs a different type of coordination system, the process of obtaining clearance roughly follows four steps:

1. **Initial coordination/project screening**
2. **Review of potential impacts**
3. **Detailed surveys**
4. **Impact mitigation**

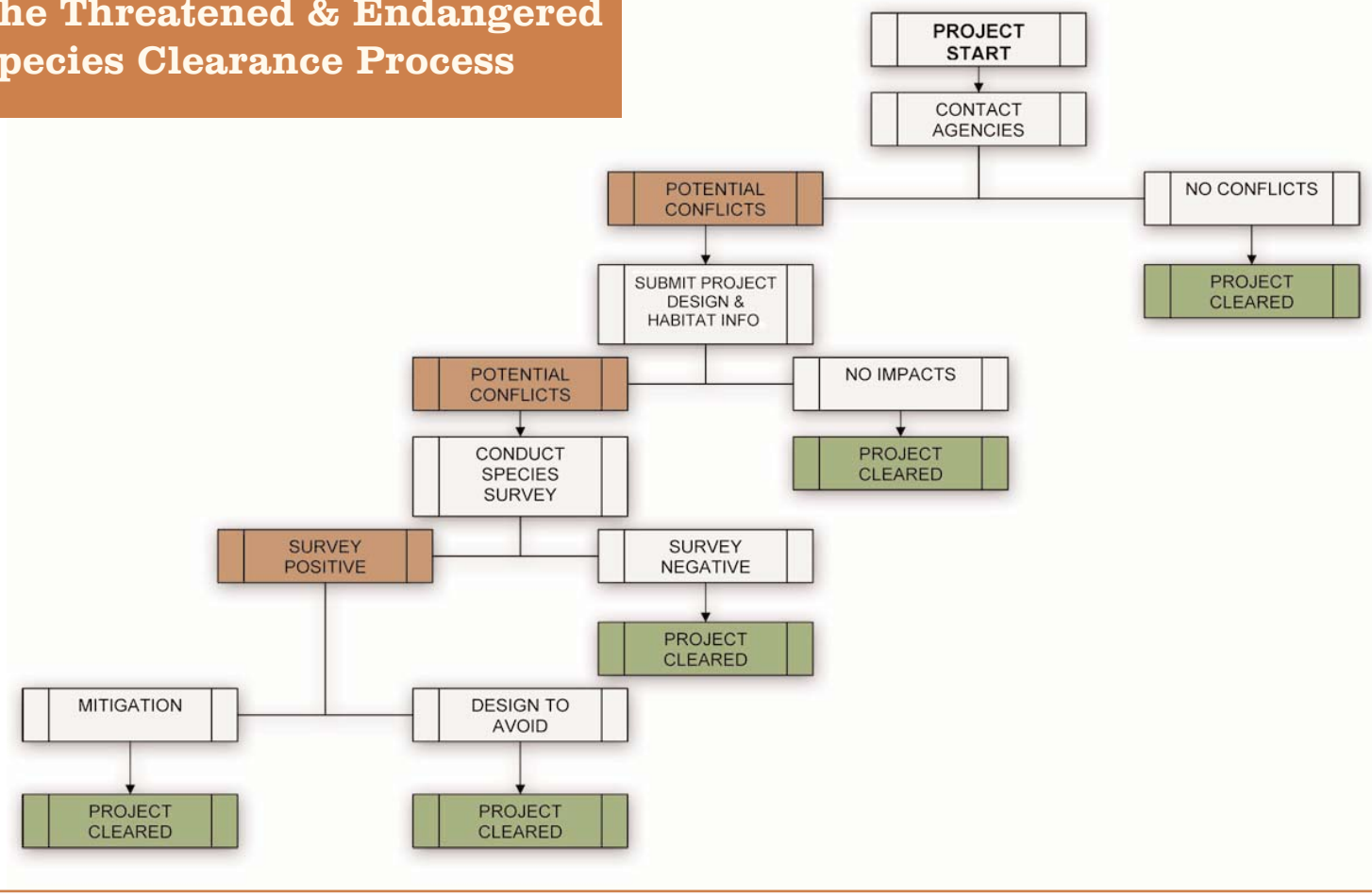
All projects must go through an initial screening by the appropriate agencies. In Pennsylvania, as well as some other states, this screening is accomplished through an online database search. Some states require that letters be submitted to the agencies requesting the screening. In all cases, basic project information is submitted, including the project location and a brief description. The response from this screening will either be "no impacts" or "potential conflict." If there is a potential conflict, additional information such as the name of the agency with jurisdiction or the species name is usually provided. If no impacts are identified, the project is given clearance for T&E species. If a potential conflict is determined, the project must go to the next step. Clearance through the initial screening does expire, so screenings should be updated on a yearly basis to keep a project in compliance with any database updates.

If a potential conflict is identified through the initial screening, a more thorough evaluation of the potential for impacts and additional coordination with the responsible agency is required. The responsible agency will provide information on the species in question and the type of habitat required by that species. Field investigations are conducted to determine if the habitats are present in the project area. Project design must also be evaluated to determine if any direct or indirect impacts to the habitat or the potential species may occur. Information from these evaluations is submitted to the regulatory agency to further evaluate the potential for impacts. This information should include a



Ledum groenlandicum (common Labrador-tea), a Pennsylvania rare plant.

The Threatened & Endangered Species Clearance Process



detailed description of the project area habitats and existing site conditions, photographs of the site, a description of both permanent and temporary construction activities, and mapping showing project design and project habitats. Construction time frames may also be important data to submit. The agency will evaluate the submitted data and determine if the potential for impacts exists. If the agency determines no impacts are expected, the project is cleared. If there are still potential impacts, the agency response will include a request for a detailed survey to determine if the species actually exists within the project limits.

If a detailed survey is required, several items need to be addressed prior to initiating the survey. First, a biologist experienced with identification of the species in question must be selected to conduct the survey. (The regulatory agencies maintain lists of prequalified biologists for many of the more common species.) Second, a detailed methodology for the survey must be developed and approved. The methodology will include the actual survey methods as well as the area to be surveyed and time frames for conducting the surveys. Most T&E surveys must be conducted during specific times of the year depending on the behavior of the species. Following completion of the survey, a full report is submitted to the agency for another round of review. The agency will again make a determination as to whether or not an impact is expected to result from the project. If no impacts are expected, the project is cleared. If impacts are expected, mitigation for the impacts will be required.

The first step in mitigating T&E impacts is to work with the project design to avoid or minimize the impacts. Documentation on these efforts will be required in order to obtain clearance. If impacts are unavoidable, a mitigation plan must be developed. Mitigation plans may include a wide variety of activities depending on the species and the type of impact. Some possible activities may include relocating plants prior to construction, moving animals out of the construction area and taking measures to ensure they do not move back in, and the development of suitable habitat at locations outside the project limits. Documentation on the complete mitigation process is submitted to the agency and, once approved, the project is cleared for environmental approval relative to species of concern.

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Mr. Stockert has extensive experience conducting and managing a full range of natural resource studies and has experience addressing potential impacts to state and federally listed species. He has overseen population surveys for mussels, bats, snakes, and plants and has prepared several biological assessments for federally listed species. He has also assisted in survey methodology development, alternative analysis, and mitigation plan preparation.