

Attachment A3
to the DOT/DNR Cooperative Agreement
Memorandum of Understanding
On Endangered and Threatened Species Consultation

Under section 29-604 (6r) (formerly 29.415 (6r)), Stats., a state agency shall notify the DNR at the earliest opportunity of the location, nature and extent of a proposed activity that the state agency may conduct, approve or fund and that may affect an endangered species or threatened species. The DNR may allow the taking of an endangered species or threatened species if all of the following apply:

1. The activity is accomplished in accordance with interagency consultation procedures established by the DNR and the state agency for the purpose of minimizing any adverse effect on the endangered species or threatened species.
2. The activity is not likely to jeopardize the continued existence and recovery of the endangered species or threatened species, or the whole plant-animal community of which it is a part, within this state and the activity is not likely to result in the destruction or adverse modification of a habitat that is critical to the continued existence of the endangered species or the threatened species within the state.
3. The benefit to public health, safety or welfare justifies the activity.

Following are the procedures identified in number 1 above for DOT projects.

The DOT project review typically addresses all environmental issues involved in a project and not just endangered resources concerns. DOT shall notify DNR of projects through the normal liaison process (General Liaison Section 11 A & B). The following process shall be used for conducting endangered resource reviews.

I. A. DOT shall notify DNR of projects at the earliest opportunity possible, preferably at the onset of project identification. Notification shall include information on the location, nature, extent of the proposed activity, and a request for Endangered and Threatened (E/T) Species information.

B. DNR shall notify DOT of all known E/T species likely to be affected by the project. (Potential impacts on federally listed E/T species will be handled through the established consultation procedures between transportation agencies and the U.S. Fish and Wildlife Service.) If no known or likely E/T species are affected by the project, DNR shall notify DOT that no further action under this section is necessary. DNR initial response is usually provided within 2-6 weeks. A new project specific time frame may be established due to extenuating circumstances.

C. DOT and DNR shall notify the other agency if they obtain new information which identifies an E/T species that is likely to be affected by the project.

II. A. If DNR determines a state E/T species is likely to be impacted by a proposed project,

DOT and DNR shall coordinate to determine if the project can be altered to avoid impacts.

B. If DOT demonstrates and DNR concurs that impacts on E/T species will be avoided or eliminated, DNR shall notify DOT that no further action under this section is necessary.

C. If additional information is needed to determine if impacts can be avoided or eliminated, DNR will assess what information is needed and will coordinate in a timely manner with DOT on how that information will be obtained. DNR will issue a sufficient information statement when it has all the information needed to assess whether taking is likely.

III. If DNR determines a take of a state E/T species cannot be avoided (and DOT proposes to continue with the project as planned) DOT and DNR shall initiate incidental take consultation and DOT will provide DNR two copies of the following information. DOT will rely on information from DNR for completing items (B) and (C).

A. Project alternatives not affecting E/T species and the reasons why such alternatives were not chosen.

B. The impact to the continued existence and recovery of E/T species which will likely occur as a result of the taking at that site, whether the habitat is critical to the species continued existence considering its state and global rank, and the benefit to public health, safety, or welfare of the activity.

C. Minimization, mitigation or other compensation that is proposed to prevent jeopardy to the continued existence and recovery of the E/T species.

IV. A. Upon the receipt of information agreed to in consultation, DNR shall determine within 30 days of receiving the information if the proposed take may be authorized in accordance with s. 29.604 (6r), Stats.. and will discuss the determination with DOT prior to submitting any public notice.

B. If a take is allowable, DNR shall give notice of the proposed activity. At least 30 days is required for public comment before allowing the taking.

C. DNR shall notify DOT of any reconsiderations warranted by public comments or hearings and any final decision prior to the release or distribution to others of the decision.

D. If DNR determines that no significant modifications of the project or associated mitigation measures are warranted by public comment then the DNR shall prepare and issue a decision on the proposed taking within 30 days following the conclusion of the public notice period, which will include a findings of fact, conclusion of law, order, and notification of appeal rights.

[Redacted]

Charles H. Thompson, Secretary
Wisconsin Department of Transportation

11/4/98
Date

[Redacted]

George E. Meyer, Secretary
Wisconsin Department of Natural Resources

11/2/98
Date