

ESA Requirements for WV SCMRA Permitting

West Virginia Department of Environmental Protection

DMR Virtual Industry Training

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Regulatory Requirements for Endangered Species Under WV SCMRA

- **West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA) §38-2-3.18**

“When the proposed mining operation will affect threatened or endangered species of plants or animals or their critical habitats, the application shall describe control measures, management techniques, and monitoring methods to be employed in order to protect or enhance such species and habitats. Endangered or threatened species are as listed by the Director of the Interior under the Endangered Species Act of 1973 (16 U.S.C. 1521 et seq).”

Regulatory Requirements for Endangered Species Under WV SCMRA

- **Protection of fish, wildlife, and related environmental values**
 - Operators are required to minimize disturbance of/and adverse impacts on fish, wildlife, and related environmental values.
 - “Take” of an endangered or threatened species is prohibited and in violation of the Endangered Species Act of 1973.
 - Mining activities are prohibited that are likely to jeopardize the continued existence of endangered or threatened species.
 - Operators are required to avoid disturbances to, enhance where practicable, and restore habitats of unusually high value for fish and wildlife.

Qualifying Permit Types Under WV SCMRA – When Are Consultations Required?

- New SMAs (MR4)
- Amendments (MR4)
- Reprocessing (MR21)
- Significant Revisions (MR4PR)
- Significant IBRs (MR4PR)
- Renewals (MR17)



Qualifying Permit Types Under WV SCMRA – When Are Consultations Required?

- IF WVDNR LIR Checked YES for Rare, threatened, or endangered species
 - Insignificant IBRs (MR4PR)
 - Prospects <250 tons (MR3)
 - Incidental Coal Removal (MR4C)

DISTRICT MCD: Clifford Brown LOCATION: Elkins PHONE: 304/637-0245

THE PROPOSED OPERATION IS IN THE PROXIMITY OF THE FOLLOWING:

- Nothing known.
- Rare, threatened or endangered species (plant or animal).
- Sensitive habitat (e.g. wetland, shale barren, island, critical wildlife habitat, cave, etc.).
- High quality stream (includes streams with desirable native and/or stocked fishes).
- Special management area (e.g. state park, wild and scenic river, national forest, private nature preserve, wildlife release site, etc.).
- Regulated species (plant or animal).
- Other (specify)

HABITAT, FEATURE, SPECIES, ETC.	DISTANCE FROM SITE	DATE OF INFORMATION	STATUS OR DESCRIPTION
Indiana bat	Adjacent	2017	Project is adjacent to habitat buffers for the Indiana bat (endangered)
Small-footed bat	Adjacent	2003	Project is adjacent to a small-footed bat capture site; this bat is state rare
Clear Fork	1.0mi	2018	High Quality Stream

COMMENTS: The area reviewed covers a 2mi radius. Additionally, a reach 6mi downstream of the project area was reviewed.

Qualifying Permit Types Under WV SCMRA – When Are Consultations Required?

- IF WVDNR LIR Checked YES for Rare, threatened, or endangered species
 - Insignificant IBR and Prospects <250 tons May qualify for exemption IF
 - Prospects that do not propose any disturbance;
 - IBR's for areas already disturbed;
 - IBR's for the deletion of acres only; or
 - IBR's immediately necessary for environmental and/or Health and safety reasons.
 - Contact DMR ESA Biologist

Requests for Endangered Species Consultation – What is Included in a Complete Submission?

- MR-27 Form (Fillable - Updated 4/2020)
 - Request for Endangered Species Consultation
 - DMR Forms - <https://dep.wv.gov/dmr/dmr%20forms/Pages/default.aspx>
 - Details specific information required
 1. Applicant information
 2. Consultants information (if using consultant)

MR-27 04/2020

STATE OF WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF MINING AND RECLAMATION
**REQUEST FOR ENDANGERED SPECIES
CONSULTATION**

New SMA Permit/SMA No: _____ Amendment No. _____
 IBR No. _____ Permit Renewal

Date Submitted: _____

1. Applicant Name: _____
Mailing Address: _____
Street Address: (if mailing address is a Post Office Box) _____
City: _____ State: _____ Zip: _____
Telephone No. _____
Email Address: _____

2. Consultants Name: _____
Mailing Address: _____
Street Address: (if mailing address is a Post Office Box) _____
City: _____ State: _____ Zip: _____
Telephone No. _____
Email Address: _____

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Requests for Endangered Species Consultation – What is Included in a Complete Submission?

- MR-27 Form (Fillable - Updated 4/2020)
 3. Information about the project
 - a) Type, Name and Location of operation
 - b) Acreage, Latitude and Longitude, Nearest PO, County
 4. Proposal/Drainage Map (Minimum scale 1" = 500')
 5. USGS Map (Scale 1" = 2000')

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3. Type of Coal Operation: _____
Name of Operation: _____
Location of Operation: _____

Total Acreage to be Permitted: _____
Central Latitude and Longitude: _____
Nearest Post Office: _____
USGS Quad Sheet Name: _____
County: _____

4. Attach a copy of the Proposal/Drainage Map clearly showing all streams and the limits of the proposed operation.
(Minimum scale of (1"=500'), with water discharge points and stream crossings clearly shown.)

5. Attach a U.S.G.S. topographic map (scale 1" = 2000') showing the following:

- A. Topographic features;
- B. Streams;
- C. Bodies of water;
- D. Manmade structures, utility lines, etc.;
- E. Quadrangle name with North arrow;
- F. Receiving stream(s);
- G. Approximate location and number of excavations, trenches, drill holes, proposed and existing roads, and indicate the number of proposed disturbed acres.

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Requests for Endangered Species Consultation – What is Included in a Complete Submission?

- MR-27 Form (Fillable - Updated 4/2020)
 6. WVDNR Lands Inquiry Response
 7. Percentage and acreage presently forested >5” DBH
 8. Presence or absence of caves, portals or openings (mining or other)
 9. Service Info.
 - IPaC tool
 - Supplemental Document (not on DEP site, contact us)

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6. Attach an electronic copy of the corresponding WVDNR Wildlife Lands Inquiry Response.

7. Provide the percentage and acreage of the proposal area that is presently forested (> 5" dbh)

8. Provide a statement confirming the presence or absence of caves, portals or openings, mining related or other. If present, further guidance will be provided in the WVDEP response.

9. a.) Provide the results of the Project Specific USFWS Information for Planning and Consultation (IPaC) Report (<https://ecos.fws.gov/ipac/>);
b.) Provide the supplemental USFWS information document.

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Requests for Endangered Species Consultation – Additional Information

- When applicable, provide additional supporting documentation such as:
 - Approved PEPs with signoff closure for the project (only applies to Amendments, Renewals, Significant Revisions, and Significant IBRs).
 - Prior survey results (bat – valid 5 years, and crayfish – valid 2 years)
 - Closure Letters from USFWS, etc.

Requests for Endangered Species Consultation – Where to Submit Consultation Requests?

- Complete Application Packet Materials are to be submitted electronically **ONLY**. All requested materials are to be submitted to the Endangered Species Consultation e-mail address at: End.Species.Coal@wv.gov.

For additional information or questions contact one of the following ESA Specialists:

April Keenan - Environmental Resources Analyst / Coordinating ESA Biologist

Office Phone: (304) 926-0499 ext. 43710

E-Mail: April.D.Keenan@wv.gov

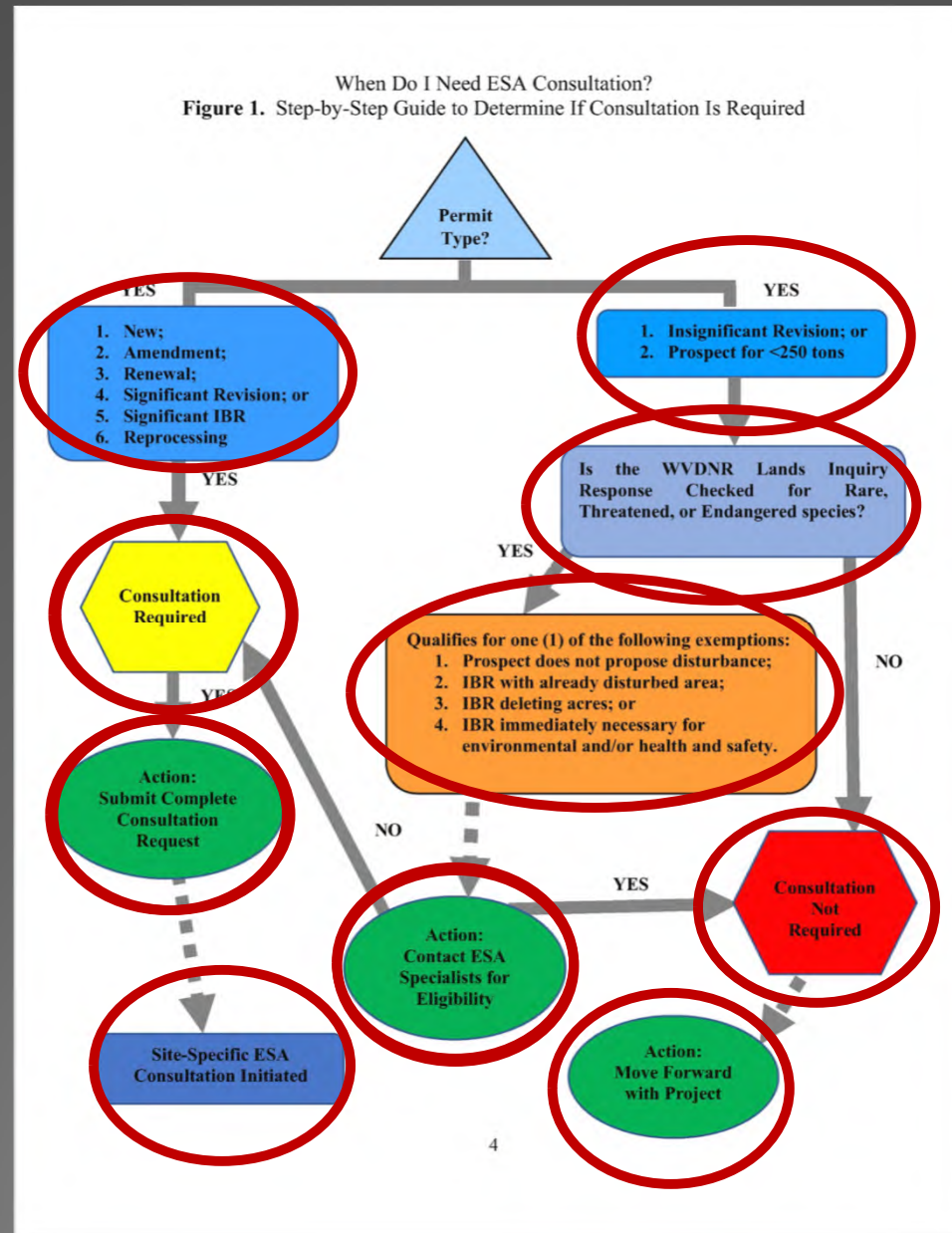
Chris Harvey - Environmental Resources Specialist 3

Office Phone: (304) 574-4465 ext. 2107

E-Mail: Christopher.J.Harvey@wv.gov

Consultation

In Review



What to Expect in 2021

- ESS submission of Required PEP monitoring
 - Consultations still electronically submitted
- ESA Request Guidance
- Aquatic PEP Guidance
 - Guide PEP development
 - WV listed aquatic species
- Endangered Species Website
 - Quick access to Materials
 - WV Listed species
 - Links to other websites (i.e., WVDNR LIR, IPaC, etc.)

Questions?

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