Figure 2: Flow Chart on Administration for ESA Section 7(a)(2) Compliance with the USFWS

Action to be completed by the project proponent

Action to be completed by the Action Agency

Step 1: The project proponent contacts Action Agency (e.g. USACE, NOAA RC, NOAA OCM, BOR, USFWS) for a Clean Water Act (CWA) or Rivers and Harbors Act (RHA) permitting and/or project funding.

Step 2: Action Agencies coordinate to evaluate project eligibility under the PBO and determine the Lead Action Agency for ESA Section 7 Compliance:

The Lead Action Agency will typically be the federal agency that provides funding for the project. USACE is typically the Lead Action Agency if the project proponent applied for a CWA Section 404 permit or RHA Section 408 permit. If the project is on USFWS property, USFWS will typically be the Lead Action Agency.

If a federal agency that is not part of the programmatic consultation (i.e. Late-Arriving Action Agency) is funding, authorizing, or carrying out an eligible project, then they will typically be the Lead Agency.

Step 3: Obtain an Official Species List from IPaC (https://ipac.ecosphere.fws.gov/) to identify listed or proposed species and evaluate their potential to occur in the Action Area.

Determine any General Protection Measures and Species Protection Measures that are applicable based on project type, site-specific constraints, project location, and Covered Species potentially occurring in the Action Area.

In coordination with the Lead Action Agency, the project proponent can seek Technical Assistance with the appropriate USFWS Field Office (see Figure 1 for Field Office jurisdictions) to discuss project-specific needs and/or identify applicable protection measures.

Prepare and submit an ESA Section 7(a)(2) Review Form (Appendix A) to the Lead Action Agency. Ideally the project proponent will submit the completed ESA Section 7(a)(2) Review Form and the CWA permit application concurrently. USFWS Programs have delegated Section 7(a)(2) authority and will serve the role of USFWS ES for their respective projects.

Step 4: Within 30 calendar days (and no longer than 60 calendar days) of receiving the ESA Section 7(a)(2) Review Form, the Lead Action Agency will review the ESA Section 7(a)(2) Review Form for completeness and notify the project proponent if their form is complete or incomplete.

If the ESA Section 7(a)(2) Review Form is complete, the Lead Action Agency will submit the form to their respective USFWS Field Office for Section 7(a)(2) compliance under the PBO.

If the ESA Section 7(a)(2) Review Form is incomplete, the Lead Action Agency will notify the project proponent where additional information is needed. Return to Step 3 above until the form is complete.

The project proponent may not implement their project until all applicable Federal, State, and local permits are obtained.

Step 5: Project proponent implements the project as described on the approved ESA Section 7(a)(2) Review Form. Report all injury or mortality of Covered Species to USFWS ES within 48 hours.

Submit a Post-Construction Report Form (Appendix B) to USFWS ES (with the Action Agency copied) by December 1st. If there is ongoing revegetation or species monitoring beyond the report due date, provide a report annually on December 1st until success criteria have been met, or monitoring has ceased.

All revegetated areas will be maintained and monitored for a minimum of 2 years after replanting is complete, or until success criteria are met, to ensure the revegetation effort is successful. The standard for success is 60% cover compared to an intact local reference site. If an appropriate reference site or pre-project conditions cannot be identified, success criteria will be developed for review and approval on a project-by-project basis, based on the specific habitat impacted and known recovery times for that habitat and geography.

Step 6: Action Agencies using the PBO will meet annually in January to discuss implementation, cumulative impacts, and identify any needs to the program or process.