



Homeland
Security

MEMORANDUM FOR: Administrative Record of the Final Programmatic Environmental Assessment for the Nationwide Operations of Small Unmanned Aircraft Systems

FROM: Jennifer Hass
Director, Environmental Planning and Historic Preservation

JENNIFER D HASS

Digitally signed by JENNIFER D HASS
Date: 2024.02.05 11:46:08 -05'00'

SUBJECT: Addressing Revisions to Endangered Species Act Determinations Addressed in the Final Biological Evaluation of the Final Programmatic Environmental Assessment for Nationwide Operations of Small Unmanned Aircraft Systems

On December 21, 2022, DHS published its Final Programmatic Environmental Assessment for the Nationwide Operation of Small Unmanned Aircraft Systems (Final PEA). In accordance with the U.S. Fish and Wildlife Service (USFWS) Section 7 of the Endangered Species Act (ESA), DHS determined a *no effect* on federally listed vegetation, aquatic, mammalian (excluding bats or birds), invertebrate (besides flying insects), reptilian, or amphibian; and *may affect but not likely to adversely affect (may affect)* determinations on birds, bats, and insect species. DHS requested consultation with the USFWS on its *may affect* determination for the species identified in the Final PEA per Section 7 of the ESA. This memo addresses the changes in DHS effects determinations made in the Final PEA- Final Biological Evaluation.

DHS revises its *no effect* determination to a *may affect* on federally listed and proposed terrestrial mammal, plant (conifers and cycads, ferns and allies, flowering plants, and lichens), amphibian, reptile, insect, bats, birds, and terrestrial critical habitat. DHS maintains a *no effect* determination on federally listed and proposed marine mammals, fish, aquatic invertebrates, and aquatic critical habitat. The revised determinations better align with the impacts disclosed in the Final PEA. On September 28, 2023, USFWS concurred with DHS's revised determinations of *may affect* on the federally listed species [refer to USFWS letter 2023-0008548-S7]. A complete list of the species and critical habitats included in this *may affect* determination can be found in the Final BE.

Federally Listed terrestrial mammals, reptilian, and amphibian

As discussed in the Final PEA and Final BE, DHS outlined three types of effects that could impact wildlife and federally listed species. These include physical strike by sUAS, behavioral reactions of species to UAS activities from noise and physical encroachment (e.g. visual), and effects of sUAS flights on physical and biological features. Impacts on wildlife can occur from flying UA near wildlife and the presence of motor vehicles used to transport sUAS near wildlife habitat. Human presence at launch and landing sites of UAs could also disturb nearby wildlife. DHS concluded short-term negligible adverse impacts on wildlife. Additionally in the Final

PEA, DHS stated impacts on federally listed species could occur from noise from the use of sUAS and the presence of motor vehicles used to transport. As stated in the Final PEA, impacts on federally listed species is not disparate to impacts discussed under wildlife. Therefore, to align with the impacts already discussed in the Final PEA and the Final BE, DHS revises its *no effect* determination to a *may affect but not likely to adversely affect* on federally listed terrestrial mammal, reptilian, and amphibian species. DHS has received concurrence from USFWS on these determinations.

Federally Listed plants (conifers and cycads, ferns and allies, flowering plants, and lichens) and critical habitat

As discussed in the Final PEA, no ground disturbance is proposed as part of the Proposed Action. Although there is potential for sUAS activities to occur in areas that include critical habitat and suitable habitat for federally listed species, there is little to no potential for collision of the sUAS that would cause damage to the physical and biological features of critical habitat. However, as stated in the Final PEA, UAs may be launched or landed from vegetated open areas. Therefore, if launch or landing sites occur within vegetated open areas, there is potential of limited presence of sUAS personnel walking or driving within the range of listed plant species, lichens, or critical habitat. These types of activities could damage, crush, or kill plants. Therefore, to align with the impacts discussed in the Final PEA and the Final BE, DHS revises its *no effect* determination to a *may affect but not likely to adversely affect* on federally listed plants (conifers and cycads, ferns and allies, flowering plants and lichens) and terrestrial critical habitat. DHS has received concurrence from USFWS on these determinations.

Conclusion

The revised determinations presented in the Final BE align with the impacts discussed in the Final PEA. The Final BE provides a comprehensive and inclusive review of impacts and mitigation measures which acknowledges the potential for similar impacts across multiple species, irrespective of their listing status. This approach aligns with the goal of ensuring that all species within the Project area receives a consistent and thorough evaluation of potential impacts, thereby facilitating compliance with NEPA and the guidance of the USFWS. It is important to note that, as stated in the Finding of No Significant Impact (FONSI) of the Final PEA, best management practices (BMPs) and mitigation measures may be subject to revision as part of the Final BE. This ensures that the Proposed Action and protective measures remain adaptive and responsive to the latest information and regulatory requirements. The revisions in the Final BE continue to affirm the FONSI, as analyzed in the original Final PEA and will not result in significant adverse environmental effects. The project remains consistent with NEPA requirements and the guidance of the USFWS. The mitigation measures and protective actions detailed in the original Final PEA, and where necessary, refined in the Final BE, remain effective in addressing potential impacts on the environment, ensuring DHS commitment to environmental responsibility and regulatory compliance.