

# Third-party Development of Biological Assessments for the Endangered Species Act Section 7 Consultation Process

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## ABSTRACT

Development of a Biological Assessment (BA) for formal Endangered Species Act (ESA) consultation between the U.S. Fish and Wildlife Service (USFWS) or National Marine Fisheries Service (NMFS) and a federal agency proposing an activity that may affect a threatened, endangered, or candidate species or designated critical habitat has historically been the responsibility of the lead federal agency. In our experience, however, it may be more expedient for the permit applicant to the federal agency to prepare the BA. Required BA elements vary greatly between USFWS and NMFS offices and regions. To further complicate matters, the USFWS/NMFS Endangered Species Consultation Handbook is unclear as to the level of detail and topic areas to include in a BA. This poster summarizes the process developed by Synergy Resource Solutions, Inc. to provide a reasonable BA for consultation purposes and guidelines for initiating a successful consultation process for other projects.

## ESA CONSULTATION – WHEN SHOULD IT START?

- A federal agency proposes an activity that may affect a threatened, endangered or candidate species, or designated critical habitat.
- Upon submission of an application for a U.S. Army Corps of Engineers Section 10/404 Permit, Bureau of Land Management or U.S. Forest Service grazing permit.

## WHAT IS A BIOLOGICAL ASSESSMENT?

- A Biological Assessment (BA) is a document provided to USFWS/NMFS by a federal agency (or applicant) to determine if a proposed action will:
- Adversely affect listed species or designated critical habitat
  - Jeopardize the continued existence of a proposed species
  - Adversely modify proposed critical habitat.

BAs are generally described as an Environmental Assessment without alternatives (and are sometimes called Biological Evaluations).

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## INFORMAL CONSULTATION

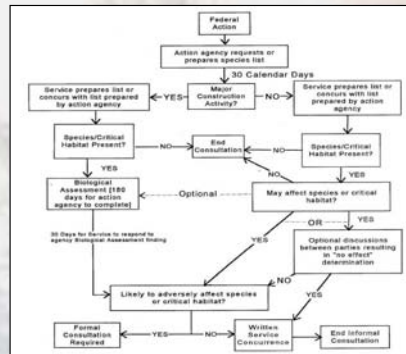


Figure 1. The Informal Consultation Process (USFWS/NMFS 1997).

## FORMAL CONSULTATION

Formal consultation is required unless USFWS/NMFS concur that the proposed action is "not likely to adversely affect" listed species or designated critical habitat.

Formal consultation begins with the lead federal agency's written request to initiate consultation and submission of the "initiation package," also known as the Biological Assessment. USFWS/NMFS has 30 days to evaluate the initiation package to determine if (1) all of the information required by the regulations has been provided and (2) whether the information includes the best scientific and commercial data available.

## FORMAL CONSULTATION INITIATION PACKAGE

The initiation package must include a summary of the following information, which is generally submitted as a *Biological Assessment*:

- Description of action being considered
- Description of the specific area that may be affected by the action
- Description of listed or proposed species or critical habitat that may be affected by the action
- Relevant reports, including any environmental impact statements, environmental assessments, biological assessment, or other analyses prepared for the proposal
- Any other relevant studies or other information available on the action, the affected listed species, or critical habitat.

Formal consultation concludes with the issuance of the Biological Opinion and an incidental take statement from USFWS/NMFS.

## NINE STEPS TO CONCURRENCE

- Offer to provide the lead federal agency with the Biological Assessment for your proposed project.
  - Speeds preparation time.
  - Allows you to fully understand the issues involved.
- Contact USFWS and/or NMFS early in the process.
  - Each agency can provide a list of known threatened or endangered species within the vicinity of your project area, as well as with contact information for biologists working in the area.
  - Provides you with documentation of species for which consultation is necessary.
- Develop the BA outline with their assistance. This greatly reduces the risk of costly and time-consuming re-writes.
- Consider all reasonable and prudent alternatives to your proposed action.
  - These do not have to be addressed in the BA, but you must understand that the federal agency has the ability to change your proposed action.
- Use your review of potential alternatives to strengthen the description of the proposed action.
- Be objective and consider the body of knowledge.
- Provide a draft of the BA to the lead federal agency and USFWS/NMFS for review (optional).
  - The agencies are not required to review the draft document, but this courtesy may be provided depending on the agency work load and priorities.
- Follow-up
  - Once the BA is provided to the lead federal agency, follow-up to ensure the agency has all the information they need to complete their review of the BA and develop their recommendation for USFWS/NMFS.

## FOR MORE INFORMATION

For more information on developing a Biological Assessment or any portion of the consultation process, try these resources:

U.S. Fish and Wildlife Service: <http://endangered.fws.gov/consultations/index.html>

National Marine Fisheries Service: <http://www.nmfs.noaa.gov/>

Bureau of Land Management: [http://www.or.blm.gov/esa/reports/ESA\\_Regs.doc](http://www.or.blm.gov/esa/reports/ESA_Regs.doc)

U.S. Forest Service Manual: [http://www.fs.fed.us/cgi-bin/Directives/get\\_dirs/fsm?2600](http://www.fs.fed.us/cgi-bin/Directives/get_dirs/fsm?2600)

U.S. Forest Service Handbook: [http://www.fs.fed.us/cgi-bin/Directives/get\\_dirs/fsh?2609.13](http://www.fs.fed.us/cgi-bin/Directives/get_dirs/fsh?2609.13)

You may also contact Synergy Resource Solutions, Inc., at 775-331-5577

