Section 7 Consultation Process

Objectives for this Session

Learn:
- Key definitions used in consultation
- When consultation is required
- When informal consultation can be used
- Steps in consultation process

endangered.fws.gov/consultations/s7hndbk/
Beginning the Section 7 Process

Is there a Federal action?

- Meaning anything funded, authorized, or carried out, in whole or in part, by a Federal agency
- Often called a “Federal nexus”

Applicants

- Anyone who requires formal approval/authorization from a Federal agency, so they can conduct an action.
- It is up to the action agency to recognize applicant status.

Designation of Non-Federal Representative

- § 402.08 Designation of non-Federal representative.
  - ultimate responsibility for compliance remains with the Federal agency.
Consultation Requirement

All Federal actions that “may affect” a listed species or designated critical habitat, directly or indirectly.

What is an Effect?
- Any response to a stressor
- May Affect Species’:
  - Reproduction
  - Numbers
  - Distribution
- One individual is enough

3 Effect Determinations
- No Effect (no Section 7 consultation required)
- May Affect, Not Likely to Adversely Affect (NLAA)
- May Affect, Likely to Adversely Affect (LAA)
NLAA Effect Determinations

- NLAA is the right call if effects are:
  - Insignificant
  - Discountable
  - Wholly beneficial
  - Be sure to document your rationale!

Consultation

- Services assist action agencies in meeting their responsibilities to ensure that their actions do not:
  - Jeopardize listed species
  - Adversely modify designated critical habitat

- Successful consultation involves good communication, working relationships, and early coordination

Steps of Section 7

- Species List
- Biological Assessment or Biological Evaluation
- Initiation
- Services’ Response
  - Concurrence or Non-Concurrence (30 days)
  - Biological Opinion (90 + 45 = 135 days)
Species List Requirements

- Acquire species list from Service’s websites
- Often County-wide or River Basin scale
- Services may include candidates to alert Federal agencies of potential listings

Informal Consultation

A process that includes all discussions, correspondence, etc., between the Services and the Federal agency or designated non-Federal representative

Informal Consultation

Allows Federal agencies to:

- Determine need for formal consultation
- Explore options to reduce or avoid adverse effects
- Explore opportunities to meet their conservation mandate under section 7(a)(1)
- Request Services’ concurrence with “May affect, not likely to adversely affect” determinations
**Formal Consultation**

Formal Consultation is required for any action that warrants a “May affect, likely to adversely affect” determination for a listed species.

---

**Purpose of Biological Assessment**

- To evaluate effects of project on listed/proposed species and/or critical habitat
- To determine need for consultation or conference
- To achieve compliance with the Endangered Species Act

---

Formal Consultation

Involves submitting a BIOLOGICAL ASSESSMENT or similar document that analyzes project effects to listed species and critical habitat, and receiving a BIOLOGICAL OPINION.
Developing a Biological Assessment

Chapter 2 – Section 7 Consultation process

<table>
<thead>
<tr>
<th>Required from agency to initiate formal consultation:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Description of action</td>
</tr>
<tr>
<td>2. Description of area affected</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Required from agency to initiate formal consultation:</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Description of listed species or critical habitat that may be affected by the action</td>
</tr>
<tr>
<td>4. Description of manner of effects and cumulative effects</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Required from agency to initiate formal consultation:</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. Relevant reports, including environmental documents</td>
</tr>
<tr>
<td>6. Any other relevant information</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>
Proposed and Listed

Section 7 applies when species or critical habitat are listed or proposed for listing under ESA

▶ CONSULTATION: Conducted for listed species and designated critical habitat
▶ CONFERENCE: Conducted for proposed species and proposed critical habitat

Conference Requirement

Section 7(a)(4): Conference is required on actions likely to jeopardize the continued existence of proposed species or destroy or adversely modify proposed critical habitat

- Some agencies may have policies to conference at the “may affect” threshold.

Jeopardy

To “jeopardize the continued existence of” means to engage in an action that reasonably would be expected, directly or indirectly…
Jeopardy (cont.)

…to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

Destruction or Adverse Modification of Critical Habitat

“Destruction or adverse modification” means a direct or indirect alteration that appreciably diminishes the conservation value of critical habitat

Adverse Modification (cont.)

Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.
Summary

- **SECTION 7 STEPS:** Species list, biological assessment or evaluation, consultation, and Services’ response
- **INFORMAL CONSULTATION** allows Federal agencies to request Services’ written concurrence with “not likely to adversely affect” determinations

Summary

- **CONFERENCE:** Conducted for proposed species and proposed critical habitat
- **CONSULTATION:** Conducted for listed species and designated critical habitat
- **FORMAL CONSULTATION** is required for all Federal actions that “may affect” a listed species or its designated critical habitat, unless consultation requirement is fulfilled through informal consultation.