

Endangered Species Act Section 7 Consultations

The Endangered Species Act

Sec. 2: Purpose

Sec. 3: Definitions

Sec. 4: Listing, Recovery, Monitoring

Sec. 5: Land Acquisition

Sec. 6: Cooperation with the States

Sec. 7: Interagency Cooperation

Sec. 8: Convention Implementation [CITES]

Sec. 9: Prohibited Acts

Sec. 10: Exemptions

Sec. 11: Penalties and Enforcement

Purposes of the ESA

“The purposes... are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (b) of this section”

Section 2(b) of the Endangered Species Act

Purposes of the ESA

“It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.”

Section 2(c) of the Endangered Species Act

Section 7: Interagency Cooperation 1

Section 7(a)(1) The Secretary shall review other programs administered by him and utilize such programs to further the purposes of the ESA. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities to further the purposes of the ESA by carrying out programs for the conservation of endangered species and threatened species

Section 7: Interagency Cooperation 2

Section 7(a)(2) **Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of designated critical habitat**

Also Requires **The Action Agency and the Services to use the best scientific and commercial data available**

Section 7: Interagency Cooperation 3

Section 7(b)(4)

Requires the Secretary to provide Federal agencies an incidental take statement, if the agency action and the incidental take will not jeopardize the continued existence of a species

When Is Consultation Required?

If a Federal agency funds, authorizes, or carries out an action that **may affect** endangered or threatened species or designated critical habitat, the agency shall initiate consultation with the Fish and Wildlife Service (Service) or the National Marine Fisheries Service (NMFS)

Informal Consultation

- **Informal Consultation** consists of discussions between the Federal agencies and the Services to determine if formal consultation is necessary
- Informal Consultation is often used to identify modifications to the action that would avoid adverse effects to listed species or critical habitat

Formal Consultation

If an Action has unavoidable adverse effects, Action Agencies and the Services initiate **formal consultation** to determine whether the Action

- is likely to jeopardize the continued existence of threatened or endangered species
- Is likely to destroy or adversely modify critical habitat that has been designated for listed species

Statutory Timelines for Formal Consultations

- Once the Services accept an initiation package provided by an Action Agency, formal consultation is initiated and concludes within 90 days. Within 45 days of concluding formal consultation, the Services will issue a **Biological Opinion** on the action.
- Therefore, from the date of initiation to the issuance of a Biological Opinion the formal consultation process takes up to 135 days, although Action Agencies and the Services can extend formal consultation by mutual agreement, if necessary.

Initiation Packages

By regulation **initiation Packages** should contain:

- A description of the action
- A description of the specific area affected by the action
- A description of the listed species/critical habitat that may be affected by the action
- A description of the manner in which they may be affected
- Any relevant reports prepared on the proposal
- Other relevant studies or available information

Biological Opinions

- 1. Consultation history**
- 2. Description of the proposed action**
- 3. Species included in the consultation**
- 4. Environmental baseline (in the action area)**
- 5. Effects of the action**
- 6. Cumulative effects**
- 7. Conclusion**
- 8. Reasonable and prudent alternatives (if applicable)**
- 9. Incidental take statement**
- 10. Conservation recommendations**
- 11. Reinitiation statement**
- 12. Literature cited**

Jeopardy and Adverse Modification

Jeopardy – an action that would be expected, directly or indirectly, 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

Adverse modification – a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a species

Incidental Take Statement

- If a Biological Opinion concludes that the action is not likely to jeopardize the species and the action is not likely to adversely modify critical habitat, the ESA requires the Services to provide an **Incidental Take Statement**, which includes the anticipated amount or extent of take of any listed wildlife species that may occur incidental to the project.
- An ITS also includes non-discretionary **Reasonable and Prudent Measures** to be carried out by the Federal agency that will minimize the impact of the incidental take. **Terms and conditions** implement these reasonable and prudent measures.

Incidental Take Statement

- **Complying with the terms and conditions of an ITS exempts the Federal agency from the prohibitions on take of listed wildlife.**
- **Reasonable and Prudent Measures and their terms and conditions are limited to “minor changes.”**