

# NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION (NTIA) FACT SHEET

## ENDANGERED SPECIES ACT (ESA) SECTION 7 CONSULTATIONS

The purpose of the Endangered Species Act (ESA) is to provide a means to conserve the ecosystems upon which endangered and threatened species depend and provide a program for the conservation of such species. The ESA directs all Federal agencies to participate in conserving these species. Specifically, Section 7(a)(1) of the ESA charges Federal agencies to aid in the conservation of listed species, and Section 7(a)(2) requires the agencies to ensure their activities are not likely to jeopardize the continued existence of Federally-listed species or destroy or adversely modify designated critical habitat.

### WHAT IS A SECTION 7 CONSULTATION?

The provision under Section 7 that is most often associated with the US Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) (the Services) is Section 7(a)(2). It requires Federal agencies to consult with the Services to ensure that actions they fund, authorize, permit, or otherwise carry out will not jeopardize the continued existence of any Federally-listed species or adversely modify designated critical habitats. The USFWS consultation process includes fish, wildlife, plants, and their habitats. Consultation with NMFS would include any Federally-listed marine and anadromous species and their habitats.

### WHO NEEDS IT?

NTIA must consult with the Services when any project or action they authorize, fund, or carry out may affect a Federally-listed species or designated critical habitat. The consultation process can vary depending on the complexity of the project or action.

The Services' staff will work with NTIA and grant recipients to develop the documentation needed to initiate and complete consultation. Grant recipients in coordination with NTIA shall contact the appropriate Services' Field Office well in advance of proposed projects or actions. Doing so allows all parties to better understand the proposed project or action and gather the information needed to complete the consultation in a timely manner.

Please consult with your state fish and game agencies as states may have separately listed threatened and endangered species.

## DEFINITIONS

**Biological Assessment** – A biological assessment shall evaluate the potential effects of the action on listed and proposed species and designated and proposed critical habitat and determine whether any such species or habitat are likely to be adversely affected by the action and is used in determining whether formal consultation or a conference is necessary.

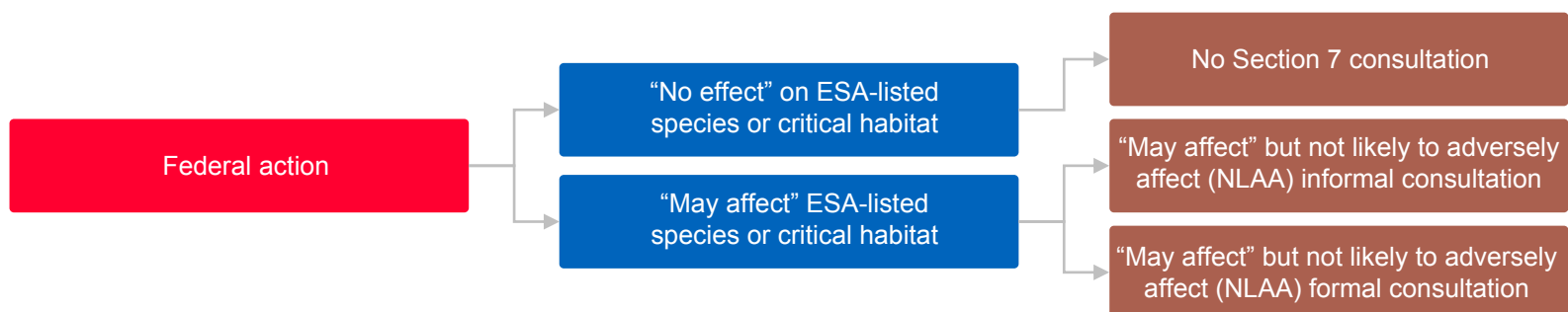
**Critical Habitat** – Critical habitat is defined as:

- Specific areas within the geographical area occupied by the species at the time of listing that contain physical or biological features essential to conservation of the species and that may require special management considerations or protection
- Specific areas outside the geographical area occupied by the species if the agency determines that the area itself is essential for conservation

**Endangered Species** – Under the Endangered Species Act, a species is considered “endangered” if it is in danger of extinction throughout all or a significant portion of its range.

**Threatened Species** – A species likely to become endangered in the foreseeable future throughout all or a significant portion of its range.

## SECTION 7 CONSULTATION PROCESS



# CONSULTATION PROCESS

## STEP 1 – INFORMAL CONSULTATION

Informal consultation is an optional process that is designed to help the action agency determine whether formal consultation is needed. [Informal consultation is an optional process in the sense that NTIA and the grant recipient can determine whether or not formal consultation is needed, or engage the regulatory agency in the manner described above.] Informal consultation has no specified time frame for completion.

The Services strongly encourage the use of informal consultation so that projects can be designed with minimal impact to listed species, possibly resulting in a determination of no adverse effect, eliminating the need for formal consultation.

## STEP 2 – REVIEW

The grant recipient may initiate informal consultation by reaching out to the Services about their project and are free to do so, keeping NTIA in the loop and maintaining all documentation for the administrative record. The grantee should contact the appropriate local Service office to determine if listed species are present within the action area. The Service responds to the request by providing a list of species that are known to occur or may occur in the vicinity; if the Service provides a negative response, no further consultation is required unless the scope or nature of the project is altered, or new information indicates that listed species may be affected.

Grant recipients may use the Service's digital project planning tool, Information for Planning and Consultation (IPaC), at <https://ipac.ecosphere.fws.gov/> to get a list of species and critical habitats that may be present in the action area.

## STEP 3 – DETERMINATION

If listed species are present, the grant recipient and NTIA must determine if the Proposed Action may affect them. A may affect determination includes those actions that are not likely to adversely affect as well as likely to adversely affect listed species. If the grant recipient and NTIA determine that the action is not likely to adversely affect listed species (e.g., the effects are beneficial, insignificant, or discountable), and the Service agrees with that determination, the Service provides concurrence in writing and no further consultation is required.

If the grant recipient and NTIA determine that the action is likely to adversely affect listed species, then NTIA must request initiation of formal consultation. This request is made in writing to the Services and includes a complete initiation package. Up to that point, interactions have been conducted as informal consultation; however, once a request for formal consultation is received, the process becomes formal, and specific time frames come into play. Formal consultation is initiated on the date the package is received unless the initiation package is incomplete. If the package is incomplete, the Service notifies NTIA of the deficiencies. If a complete package is submitted, the Service should provide written acknowledgment of the request within 30 working days. This written acknowledgment is not mandatory but is encouraged so that there is documentation in the administrative record that formal consultation has been initiated.

## STEP 4 – FORMAL CONSULTATION (IF APPLICABLE)

Formal consultation is a mandatory process for proposed projects that may adversely affect listed species, is initiated in writing by NTIA, and concludes with the issuance of a biological opinion by the Services. [Written concurrence must be requested and received from the regulatory agency if a project "may affect" but is not likely to adversely affect a listed species or critical habitat.]

From the date that formal consultation is initiated, the Service is allowed 90 days to consult with NTIA and the grant recipient and 45 days to prepare and submit a biological opinion; thus, a biological opinion is submitted to NTIA within 135 days of initiating formal consultation. The 90-day consultation period can be extended by mutual agreement of NTIA and the Service; however, the consultation period cannot be extended more than 60 days without the consent of the grant recipient. The extension should not be indefinite and a schedule for completion should be specified.

## STEP 5 – CONCLUSION OF BIOLOGICAL OPINION

The biological opinion is the document that states the opinion of the Service as to whether or not the Proposed Action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

The conclusion of the biological opinion will state whether NTIA has ensured that the grant recipient's Proposed Action is not likely to jeopardize the continued existence of a listed species and/or result in the destruction or adverse modification of critical habitat. A biological opinion usually includes conservation recommendations to further the recovery of listed species, and it also may include reasonable and prudent measures, as needed, to minimize any "take" of listed species.

Section 7(a)(4) requires NTIA to confer with the Services on any agency action that is likely to jeopardize the continued existence of any species proposed for listing or result in the adverse modification of critical habitat proposed to be designated. A conference may involve informal discussions between the Services, NTIA, and the grant recipient. Following informal conference, the Services issue a conference report containing recommendations for reducing adverse effects. These recommendations are discretionary, because an agency is not prohibited from jeopardizing the continued existence of a proposed species or from adversely modifying proposed critical habitat. However, as soon as a listing action is finalized, the prohibition against jeopardy or adverse modification applies, regardless of the stage of the action.

## GETTING STARTED

Grant recipients wishing to explore beginning a Section 7 consultation should consult the Ecological Services office nearest the Proposed Action project site. See the USFWS "Find a facility" map to locate the nearest office at <https://www.fws.gov/visit-us>. Regional NMFS office locations and contact information can be found at <https://www.fisheries.noaa.gov/contact-directory/regional-offices>.