



Consultations with Federal Agencies

Section 7 of the Endangered Species Act

The Endangered Species Act (ESA) directs all Federal agencies to participate in endangered species conservation. Specifically, section 7 of the ESA charges Federal agencies to aid in the conservation of listed species (section 7 (a)(1)), and requires Federal agencies to ensure that their activities are not likely to jeopardize the continued existence of listed species or adversely modify designated critical habitats (section 7 (a)(2)).

What types of conservation activities are we doing under section 7(a)(1)?

One way that we actively carry out conservation activities for listed species under section 7(a)(1) is through our Partners for Fish and Wildlife Program. This program is geared toward habitat restoration on private lands. Listed species are considered a priority in this program. As a result, habitat restoration efforts funded by the Partners program have directly benefitted a number of listed species, such as the Louisiana black bear (*Ursus americanus luteolus*), the red-cockaded woodpecker (*Picoides borealis*), and the Karner blue butterfly (*Lycaeides melissa samuelis*).

Other Federal agencies also have used their existing authorities to conserve listed species. For example, the U. S. Department of Agriculture's Natural Resources Conservation Service has incorporated listed species and their conservation needs into the Wetland Reserve Program, the Wildlife Habitat Incentive Program, and the Environmental Quality Incentive Program.

What is the consultation process that occurs under section 7(a)(2)?

The provision under section 7 that is most often associated with the Service and other Federal agencies is section 7(a)(2). It requires Federal agencies to consult with the Service to ensure that actions they fund, authorize, permit, or otherwise carry out will not jeopardize the continued existence of any listed

species or adversely modify designated critical habitats. The Service issued regulations in 1986 detailing the consultation process, and we have since completed a handbook describing the process in detail. The handbook is available on our web site at <http://www.fws.gov/consultations>.

How is the consultation process started?

Before initiating an action, the Federal action agency (the agency planning a specific action), or its non-Federal permit applicant, must ask the Service to provide a list of endangered, threatened, and proposed species and designated and proposed critical habitats that may be present in the project area. If we answer that no species or critical habitat are present, then the Federal action agency has no further ESA obligation under section 7(a)(2) and consultation is concluded. If a species is present, then the Federal action agency must determine whether the project may affect listed species. If so, consultation is required. If the action agency determines (and the Service agrees) that the project is not likely to adversely affect any listed species or designated critical habitat, then the consultation (informal to this point) is concluded and the Service's concurrence is put in writing.

What happens if a Federal project may adversely affect a listed species?

If the Federal action agency determines that a project may adversely affect a listed species or designated critical habitat, formal consultation is required. There is a designated period of time in which to consult (90 days), and beyond that, another set period of time for the Service to prepare a biological opinion (45 days). The analysis of whether or not the proposed action would be likely to jeopardize the continued existence of the species or adversely modify designated critical habitat is contained in the biological opinion. If a jeopardy or adverse modification determination



USFWS photo by John & Karen Hollingsworth

Red-cockaded woodpecker

is made, the biological opinion must identify any reasonable and prudent alternatives that could allow the project to move forward.

How does the Service manage projects that require the 'take' of some listed species?

If the Service issues either a nonjeopardy opinion or a jeopardy opinion that contains reasonable and prudent alternatives, it may include an incidental take statement. "Take" is defined as harassing, shooting, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting listed species or attempting to engage in any such conduct. ("Harm" is further defined to include significant habitat modification or degradation that results in death or injury to a listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering.) "Incidental take" is defined as take that is incidental to, and not the purpose of, an otherwise lawful activity. The Service must anticipate the take that may result from the proposed project and, providing such take will not jeopardize the continued existence of

listed species, describe that take in the incidental take statement. The latter contains clear terms and conditions designed to reduce the impact of the anticipated take to the species. These terms are binding on the action agency.

What is the consultation workload?

From 1998-2002 the Service conducted over 300,000 informal and formal Section 7 consultations. The vast majority of these actions were not likely to adversely affect listed species or their designated critical habitat. A large percentage of projects that would have, at least as initially planned, adverse impacts to listed species are dealt with through informal consultation, in which the Federal action agency makes changes to the project design so that adverse impacts to listed species are avoided.

As more Federal agencies begin to work with the Service under section 7(a)(1), the conservation benefits should be reflected in an even lower number of jeopardy and adverse modification opinions.

What type of guidance is available for other Federal agencies?

Guidance is available on our section 7 web site at <http://www.fws.gov/endangered/consultations>. Please call us at 703/358-2106 if you have any questions, or see our Endangered Species Contacts web site at <http://www.fws.gov/endangered/contacts.html> to locate a Service office in your area.

What is the Service doing to facilitate the consultation process?

Designing projects in ways that are compatible with the conservation needs of listed species is among the most effective methods of ensuring a more rapid and efficient section 7 consultation process. The Service is currently developing an internet-based consultation and information system that can be used to screen out projects that will not affect listed species, complete the requirements of informal consultation, expedite formal consultation, and better integrate section 7 consultation with other environmental review processes. This system is being designed to provide project proponents with information that will allow them to better understand how their actions may affect listed species along with suggestions for how to avoid, minimize, or mitigate these effects. Project proponents will be able to go on-line



Photo by Dan Anderson/USFWS

This Louisiana black bear was one of the largest ever captured on Tensas River National Wildlife Refuge, weighing in at over 400 pounds. The bear was trapped using a leg-hold cable snare that does not injure the animal. The biological information obtained, including weight, sex, a tooth for aging, and other measurements, are part of the Service's ongoing research efforts to aid in the recovery of this threatened subspecies. Afterwards, the bear was released on site.

and receive information regarding listed species and designated critical habitat that may be affected by proposed activities, obtain "best management practices" (BMPs) that can be used during the project design phase to address anticipated impacts, identify appropriate Service contacts, and submit information that will be needed to complete section 7 consultation. We anticipate this system will be functional within limited areas of the country in late 2007.

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February 2007