



# Consultations with Federal Agencies

## *Section 7 of the Endangered Species Act*

The purposes of the Endangered Species Act are to provide a means for conserving the ecosystems upon which endangered and threatened species depend and 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 that their activities are not likely to jeopardize the continued existence of listed species or adversely modify designated critical habitats.

### **How does the consultation process support the recovery of species and their ecosystems?**

The Endangered Species Program of the U.S. Fish and Wildlife Service uses section 7 tools in partnership with other Service programs and other Federal agencies to collaboratively solve conservation challenges, as well as create opportunities, using section 7 consultations, to recover the ecosystems of listed species. Consultations also provide ways to implement recovery tasks by addressing threats to listed species that may result from Federal agency programs and activities.

### **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/endangered/consultations>.

### **What is the Service doing to facilitate the consultation process?**

Designing projects in ways that are compatible with the conservation needs of listed species and their ecosystems is among the most effective methods of ensuring a more rapid and efficient section 7 consultation process, as well as species' recovery. The Information, Planning, and Consultation System is an emerging tool for action agencies, their applicants, and other project proponents to use during the initial phases of project development and assessment. The system will allow for more effective integration of listed resource conservation needs and the eventual streamlining of section 7(a)(2) consultation.

### **How does a consultation get started?**

Early coordination is one of the most effective methods of (1) streamlining section 7 consultation, (2) reducing the need to make project modifications during the consultation process, and (3) improving the ability of section 7 to fulfill its role as a recovery tool. Federal agencies, applicants, and the Service engage in early coordination to develop methods of integrating proposed activities with the conservation needs of listed resources before the proposed actions are fully designed.



USFWS photo by John & Karen Hollingsworth

*Red-cockaded woodpecker*

Before initiating an action, the Federal agency or its non-Federal permit applicant should coordinate with the Service as to the species that may be within their action area. If a listed species is present, the Federal agency must determine whether the project may affect it. If so, consultation may be required. If the action agency determines (and the Service agrees) that the project is not likely to adversely affect a listed species or designated critical habitat, and the Service concurs in writing, then the consultation (informal to this point) is concluded.

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

If the Federal agency determines that a project is likely to adversely affect a listed species or designated critical habitat, the agency initiates formal consultation by providing information with regard to the

nature of the anticipated effects. The ESA requires that consultation be completed within 90 days, and the regulations allow an additional 45 days for the Service to prepare a biological opinion. The analysis of whether or not the proposed action is likely to jeopardize the continued existence of the species or adversely modify designated critical habitat is contained in a biological opinion. If a jeopardy or adverse modification determination is made, the biological opinion must identify any reasonable and prudent alternatives that could allow the project to move forward.

The Service must anticipate any incidental take that may result from the proposed project and, provided that such take will not jeopardize the continued existence of the listed species, authorize that take in an incidental take statement. The latter contains clear terms and conditions designed to reduce the impact of the anticipated take to the species involved. The authorization of incidental take is contingent upon the Federal agency carrying out the terms and conditions. If the Service issues either a non-jeopardy opinion or a jeopardy opinion that contains reasonable and prudent alternatives, it may include an incidental take statement.

#### **What is the consultation workload?**

In FY 2008, the Service assisted Federal agencies in carrying out their responsibilities under section 7 on 35,100 occasions. The vast majority of the workload was technical assistance to Federal agencies and informal consultations on actions that were not likely to adversely affect listed species or their designated critical habitat. A large percentage of projects, as initially planned, would have had adverse impacts to listed species, but were dealt with through informal consultation. In these situations, the Federal agency made changes to the project design so that adverse impacts to listed species were avoided.

#### **What type of guidance is available for other Federal agencies?**

Guidance is available on our section 7 web site at <http://www.fws.gov>.



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, is part of the Service's ongoing research efforts to aid in the recovery of this threatened subspecies. Afterwards, the bear was released on site.*

[gov/endangered/consultations](http://www.fws.gov/endangered/consultations). Please call us at 703-358-2106 if you have any questions, or see our Endangered Species Program Contacts fact sheet at [http://www.fws.gov/endangered/factsheets/es\\_contacts.pdf](http://www.fws.gov/endangered/factsheets/es_contacts.pdf) to locate a Service office in your area.

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