

Template for Biological Assessments & Biological Evaluations

Provided by NMFS Pacific Island Regional Office, Protected Resources Division
Revision Date: January 2009

INSTRUCTIONS

The following document is intended to serve as a template for Biological Assessments (BA) and Biological Evaluations (BE) submitted by Federal action agencies or their non-Federal representatives to the National Marine Fisheries Service (NMFS) for consultation as required by Section 7 of the Endangered Species Act (ESA). The purpose of the BA-BE is to describe proposed actions and their effects on ESA-listed species.

COLOR KEY

Text coloring schemes:

- Black font (boilerplate)
- Blue font (*guidance & examples*)
- Red font (**places to insert information**)

As you finalize sections you should delete *blue* and **red** text.

[BIOLOGICAL ASSESSMENT OR BIOLOGICAL EVALUATION]

[use one term or the other, as explained below]

[Project Name]

[ACTION AGENCY TRACKING NUMBER, IF APPROPRIATE]

*[A Biological Assessment (BA) is prepared for “major construction activities” considered to be Federal actions significantly affecting the quality of the human environment as referred to in the National Environmental Policy Act of 1969 (NEPA). A BA is required if listed species or critical habitat may be present in the action area, and the contents for a BA are described in 50 CFR 402.12(f). “Biological Evaluation” (BE) is a generic term for all other types of analyses. Although agencies are not required to prepare a BA for non-construction activities, **if a listed species or critical habitat is likely to be affected, the agency must provide NMFS with an evaluation on the likely effects of the action.** Often this information is referred to as a BE. NMFS uses this documentation along with any other available information to decide if concurrence with the agency’s determination is warranted. Recommended contents are the same as for a BA, as referenced above. The BAs and BEs should not be confused with Environmental Assessments (EA) or Environmental Impact Statements (EIS) which may be required for NEPA projects. These EAs and EISs are designed to provide an analysis of multiple possible alternative actions on a variety of environmental, cultural, and social resources, and often use different definitions or standards. However, if an EA or EIS contains the information otherwise found in a BE or BA regarding the project and the potential impacts to listed species, it may be used in lieu of a BE or BA.]*

Prepared for:

[Federal action agency]

[Address of above agency]

Prepared by:

[insert your name and title]

[insert date]

1.0 BACKGROUND/HISTORY

The purpose of this [Biological Assessment/Biological Evaluation (BA/BE)] is to address the effect of the [insert project name] Project on ESA-listed species, listed as endangered or threatened under the Endangered Species Act (ESA), or their designated critical habitat. [name the Federal action agency, the Federal nexus for the proposed action, and the governing statute – i.e. Federal action agency X intends to authorize, permit, fund, or carry out the action described above, under section X of the Governing Act].

If there are multiple federal action agencies involved, list each and identify which is the lead federal action agency for the consultation.

The project involves [insert project primary function] in [location]. Because work will occur [adjacent to, or in, the ocean], it has the potential to impact the following ESA-listed marine species that occur in the area: [insert common and scientific names of each species] and/or its/their habitat. [If the project area encompasses monk seal critical habitat (NWHI only), mention that the project also has the potential to affect that].

Early coordination and pre-consultation with NMFS was conducted during a series of site visits, meetings, and phone conversation including: [Insert list of pre-consultation coordination and dates here].

This [BA/BE], prepared by the [Federal action agency, non-fed rep, or consultant], addresses the proposed action in compliance with Section 7(c) of the ESA of 1973, as amended. Section 7 of the ESA assures that, through consultation (or conferencing for proposed species) with the National Marine Fisheries Service (NMFS) and/or the U.S. Fish and Wildlife Service (USFWS), federal actions do not jeopardize the continued existence of any threatened, endangered or proposed species, or result in the destruction or adverse modification of critical habitat.

The purpose of the proposed action is to [insert purpose and need].

The project purpose and need statement should provide a clear purpose for the proposed project, as well as a brief description of proposed actions in relation to the needs discussed.

2.0 DESCRIPTION OF THE ACTION & ACTION AREA

The proposed action includes [list project components here in a logical order].

Include a detailed description of what work will be done, and how it will be accomplished, particularly for components that are reasonably likely to have impacts on protected species and/or their habitats. Also include measures to be taken to reduce or eliminate potential impacts from the action, as well as any proposed beneficial components of the project intended as offsetting actions for unavoidable potential adverse effects or as enhancement opportunities; e.g., habitat protection, wetland creation, restoration or enhancements, etc.

The action area includes [describe the action area in terms of the geographic extent of all the project's potential effects – see definition below, and refer to attached maps or figures as appropriate].

Definitions from 50 CFR §402-02:

Action Area: All areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.

Direct Effects: Direct or immediate effects of the project on the species or its habitat. Direct effects include those resulting from interdependent or interrelated actions.

Indirect Effects: Those effects that are caused by or will result from the proposed action and are later in time, but still reasonably certain to occur.

3.0 LISTED SPECIES & CRITICAL HABITAT IN THE ACTION AREA

A large number of ESA-listed species occur in the Pacific Islands Region (Hawaii, Guam, Northern Marianas, American Samoa, and Pacific Remote Island Area), including many widely-distributed marine species. NMFS has ESA jurisdiction over marine species - see <http://www.fpir.noaa.gov/> and click on 'ESA Consultation' for a list of marine species protected under the ESA in the Pacific Islands Region. USFWS has ESA jurisdiction over terrestrial and freshwater species, including the terrestrial life history stages of sea turtles – see <http://www.fws.gov/pacificislands/wesa/endspindex.html> for a list of terrestrial and freshwater species protected under the ESA in the Pacific Islands.

Species lists of ESA-listed marine species occurring in each archipelago in the Pacific Region (Hawaii, Marianas, American Samoa) may be obtained from the NMFS website above, or species lists requests for proposed project areas may be submitted to NMFS. However, because all ESA-listed marine species in the Pacific Region are widely distributed, a species list for a project area is the same a species list for an archipelago, thus it is much quicker to obtain the species list from the NMFS website.

ESA consultation is only necessary if ESA-listed species may be affected by the proposed project. However, the “not known to occur here” approach is a common but flawed way of arguing that a proposed project will not affect ESA-listed species. The operative word here is “known.” Unless adequate surveys have been conducted or adequate information sources have been referenced, this statement is difficult to interpret. It begs the questions “Has anyone looked?” and “How did they look?” Remember that your evaluation of potential project effects does not end if ESA-listed are not found in the project area. You must still evaluate the effects of the proposed action on potential habitat for the species, even if it is not known to be occupied.

Once the listed species/critical habitat occurring in the action area have been identified, then this section should describe human activities and natural events that have led to the current status of the listed species/critical habitat. This section can rely extensively on cross-referencing existing documents, such as recent status reviews, recovery plans, biological opinions, federal register notices, NEPA documents, etc. This section presents the biological or ecological information relevant to completing the biological assessment. Appropriate information on the species' life history, its habitat and distribution, and other data on factors necessary to its

survival should be included to provide background for analyses in later sections. When designated critical habitat is affected, a companion analysis should be done for that habitat.

The following ESA-listed marine species occur within the action area, or may be affected by the proposed action: [*insert species names*]. [*also describe any designated critical habitat that may be affected by the proposed action*].

4.0 ENVIRONMENTAL BASELINE CONDITIONS

This section identifies and describes all known human-induced sources of impact to the listed species in the Action Area, except those caused by the proposed action. The purpose of the environmental baseline is to provide the context for the impacts of the proposed action with regard to the impacts of all the other human activities that are also affecting the listed species. Although the impacts described in this section are limited to those in the Action Area, it should be noted that additional impacts outside the Action Area often affect the same individuals and populations that are affected in the Action Area. E.g., for sea turtles, additional sources of impacts outside the action area may include pelagic fisheries, nearshore fisheries, directed harvest (of turtles and eggs) and various sources of nesting beach degradation.

5.0 EFFECTS OF THE ACTION

This section includes an analysis of the direct and indirect effects (defined above) of the proposed action, and any interrelated and interdependent actions (see definition below), on the species and/or critical habitat. Factors to be considered in the analysis include: proximity of the action, distribution, timing, nature of the effect, duration, disturbance frequency, disturbance intensity, and disturbance severity. A sufficiently detailed description of the proposed action should be provided in the Proposed Action and Action Area Section above so that the scope of the action and the subsequent analysis of its potential effects are clear.

*Definition: **Interrelated or Interdependent Activity:** An interrelated activity is an activity that is part of the proposed action and depends on the proposed action for its justification. An interdependent activity is an activity that has no independent utility apart from the action under consultation.*

6.0 CUMULATIVE EFFECTS (Formal consultation only)

Describe all “non-Federal” actions reasonably certain to occur in the foreseeable future. Includes state, local, private, and tribal actions (e.g. residential developments, watershed enhancement, etc.). Section 7 regulations require the Federal action agency to provide an analysis of cumulative effects, along with other information, when requesting initiation of formal consultation. Note that ‘cumulative effects’ under the ESA is defined more narrowly than under NEPA¹.

¹ “Cumulative impacts”, as defined by NEPA [40 C.F.R. §1508.7], are the impacts on the environment which result from the incremental impacts of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts are distinct from

7.0 CONCLUSIONS

An effects determination should be made for the proposed action with regard to each listed species and designated critical habitat. Effects determinations by the action agency are summarized in the May 2008 “Action Agency Guide to ESA Consultation w/ NMFS” and “Effects Determination Guidance” accompanying this template, and also found at <http://www.fpir.noaa.gov/> (click on ‘ESA Consultation’). As described in those documents, the 3 possible effects determinations for each species are: 1) No Effect (NE); 2) May Affect, but Not Likely to Adversely Affect (NLAA); and 3) May Affect, and Likely to Adversely Affect (LAA).

In conclusion, we have determined that the proposed action [**will have no effect on/may affect, but is not likely to adversely affect/may affect, and is likely to adversely affect**] [**each listed species/designated critical habitat**].

As described in the May 2008 “Action Agency Guide to ESA Consultation w/ NMFS” and “Effects Determination Guidance” accompanying this template, and also found at <http://www.fpir.noaa.gov/> (click on ‘ESA Consultation’):

A NE effects determination requires no consultation with NMFS, a NLAA effects determination requires a request for concurrence from NMFS (informal consultation), and a LAA effects determination requires initiation of formal consultation with NMFS.

8.0 LITERATURE CITED

Include all scientific papers, agency reports, other literature, and personal communications.

“cumulative effects”, as defined by the ESA [50 C.F.R. § 402.02], which are those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area.