



FACT SHEET
Broadband Technology Opportunities Program
Endangered Species Act Section 7

Overview

The Endangered Species Act of 1973 (ESA) administered by the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) protects threatened and endangered (T&E) species and the critical habitats they need to survive.

The Department of Commerce (DOC) National Telecommunications and Information Administration (NTIA) will examine the project information to determine whether an environmental assessment (EA) is required. If an environmental assessment is necessary, recipients are required to complete ESA Section 7. NTIA will issue a Special Award Condition (SAC) to the recipient, including a requirement for an ESA Section 7 consultation. The consultation will determine:

- Potential effects on protected species and their critical habitats.
- Mitigation measures that may be required to reduce any potential adverse effects.

The recipient initiates the ESA Section 7 consultation with the FWS or NMFS and NTIA will assist and advise throughout the consultation process.

Section 7 Responsibilities of BTOP recipients: Consultation Process

There are two types of Section 7 consultation: informal and formal consultation process. The recipient will initiate the informal consultation and if formal consultation is necessary, NTIA will conduct the formal consultation with the FWS or NMFS. All the results of any required consultation will be documented in the EA.

Informal Consultation

Informal consultation with FWS or NMFS is necessary to determine any potential effect in or near the location of the project. Informal consultation includes all discussions, telephone conversations, meetings, and correspondence between the FWS or NMFS, the recipient, and NTIA. Informal consultation takes place prior to and may eliminate the need for a formal consultation.

Prior to initiating the FWS consultation, recipients should research potential T&E species or habitat by looking up the species list via the FWS website: www.fws.gov/endangered/species/index.html. The recipient should then contact FWS to determine whether there may be listed species and whether the proposed project has the potential to impact them. The recipient should communicate all findings to NTIA.

The FWS or NMFS will prepare a list of species known to exist in the study area. If no species or habitat is known to exist, then the consultation is complete. If a T&E species or habitat is known to exist, then the FWS/NMFS will determine if the proposed action will impact the species or habitat.

The possible outcomes of an informal consultation are:

- No effect. No further consultation necessary.
- Not likely to adversely affect. Requires FWS or NMFS concurrence of determination with possible mitigation measures or requirements.
- Likely to adversely affect. Requires a Biological Assessment (BA), to be prepared by the recipient, initiating formal consultation.





Formal Consultation

To begin formal consultation, the Federal Environmental Specialist will provide support to the recipient to send a written request, accompanied by a BA, to FWS or NMFS initiating formal consultation.

A BA is a document prepared for the Section 7 consultation process to determine whether a proposed activity under the authority of a Federal agency is likely to adversely affect listed species, species proposed for listing, or designated critical habitat. Recipients are responsible for the preparation of BAs and the associated costs, which may include hiring a qualified consultant.

Formal consultation should last no longer than 90 days and the appropriate regulatory agency (FWS or NMFS) will issue a Biological Opinion (BO) within 45 days.

The BA should include the following information:

- A description of the action being considered.
- The geographic area that may be affected by the action.
- Any listed species or critical habitat that the action may affect and how the action may affect them.
- Cumulative impacts on any listed species or critical habitat.
- A discussion of any EAs, Environmental Impact Statements (EISs), or other BAs which have been prepared for the action.
- Any other relevant information on the action, affected species, or critical habitat.

The formal consultation process concludes with the FWS and/or NMFS issuing a BO. The BO has three possible findings:

- Not jeopardized. The action will not jeopardize protected species, and the action may proceed.
- Likely to jeopardize. The action is likely to jeopardize protected species. The potential to jeopardize may be mitigated to below significant levels. DOC/NTIA has several options:
 - Adopt "reasonable and prudent measures" for eliminating jeopardy/adverse modification and comply with incidental take statement.
 - Cancel the project.
 - Reinitiate consultation by proposing modifications or alternatives not yet considered.
- Jeopardize continued existence. The action will jeopardize the continued existence of protected species. The project cannot proceed as is. After major redesign or relocation, the consultation process may be re-initiated and the project reevaluated.

Additional Resources

- Endangered Species Act of 1973 (www.fws.gov/laws/lawsdigest/ESACT.html or www.fws.gov/Endangered/esa-library/pdf/ESAall.pdf).
- U.S. Fish and Wildlife Service offices (www.fws.gov/Endangered/regions/index.html).
- U.S. Fish and Wildlife Service species (www.fws.gov/Endangered/species/index.html).
- National Marine Fisheries Service (www.nmfs.noaa.gov).

