

Section 7(c) of the Act requires federal agencies proposing major construction activities complete a biological assessment to determine the effects of the proposed actions on listed and proposed species. A major construction activity is defined as "a construction project (or other undertaking having similar physical impacts) which is a major federal action significantly affecting the quality of the human environment as referred to in the National Environmental Policy Act" (50 CFR Part 402). If a biological assessment is not required (i.e., all other actions), the federal agency is still required to review their proposed activities to determine whether listed species may be affected. If such a determination is made, formal consultation with the Service is required.

For those actions wherein a biological assessment is required, the assessment should be completed within 180 days of initiation. This time-frame can be extended by mutual agreement between the federal agency or its designated non-federal representative and the Service. If an assessment is not initiated within 90 days, this list of threatened and endangered species should be verified with the Service prior to initiation of the assessment. The biological assessment may be undertaken as part of the federal agency's compliance of section 102 of the NEPA and incorporated into the NEPA documents. We recommend that biological assessments include the following:

1. A description of the project.
2. A description of the specific area that may be affected by the action.
3. The current status, habitat use, and behavior of T/E species in the project area.
4. Discussion of the methods used to determine the information in Item 3.
5. An analysis of the affects of the action on listed species and proposed species and their habitats, including an analysis of any cumulative effects.
6. Coordination/mitigation measures that will reduce/eliminate adverse impacts to T/E species.
7. The expected status of T/E species in the future (short and long term) during and after project completion.
8. A determination of "May affect, likely to adversely affect" or "May affect, not likely to adversely affect" for listed species.
9. A determination of "is likely to jeopardize" or "is not likely to jeopardize" for proposed species.
10. Citation of literature and personal contacts used in developing the assessment.

If it is determined a proposed program or project "is likely to adversely affect" any listed species, formal consultation should be initiated with this office. If it is concluded the project "is not likely to adversely affect" listed species, the Service should be asked to review the assessment and concur with the determination of no adverse effect.

A federal agency may designate a non-federal representative to conduct informal consultation or prepare biological assessments. However, the ultimate responsibility for section 7 compliance remains with the federal agency and written notice should be provided to the Service upon such a designation. We recommend federal agencies provide their non-federal representatives with proper guidance and oversight during preparation of biological assessments and evaluation of potential impacts to listed species.

Section 7(d) of the Act requires that the federal agency and permit/license applicant shall not make any irreversible or irretrievable commitment of resources which would preclude the formulation of reasonable and prudent alternatives until consultation on listed species is completed.