



### Attachment 3: Template Programmatic Biological Opinion

## United States Department of the Interior FISH AND WILDLIFE SERVICE

IN REPLY REFER TO:

Date ##,200#

Applicant  
Agency  
address  
City, State zip

Subject: Formal Programmatic Consultation on the Construction and Maintenance of ##  
Miles of New Roadway in ??? Counties, State

Dear Mr/Ms Manager:

This document transmits the U.S. Fish and Wildlife Service's (Service) biological opinion based on the Service's review of the proposed construction and maintenance of ## miles of new roadway in ??? Counties, ??State, and its effects on the federally endangered XXX, QQQQ; federally threatened YYYY, SSSS; and the Federal candidate ZZZZ in accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)(Act). Critical habitat has been designated for XXXX. Your date, request for formal consultation was received on date. This is a ##-year biological opinion which will be reviewed by the Service every # years.

As requested by the Applicant, this biological opinion also incorporates a technical assistance letter, which addresses project effects on the candidate ZZZZ. Should the ZZZZ listing action be finalized as proposed, the Service intends to adopt the technical assistance as the biological opinion for project effects. When the technical assistance is adopted in this manner, it would satisfy applicants consultation requirements.

This biological opinion is based on information provided in the:

1. Biological assessment
2. Other documents
3. unpublished materials in Service files.

A complete administrative record of this consultation is on file at the Service's Where Ever Fish and Wildlife Office.

The Service has made a determination that the proposed action is not likely to adversely affect the following species: (1) QQQQ, (2) SSSS, *etc.*

## BIOLOGICAL OPINION

### Description of the Proposed Action

#### Background.

Applicant is responsible for the construction and maintenance of ##### miles of roads in a service area that covers ##### square miles. Roads constructed by Applicant are projected to facilitate urban expansion by ##### acres in the service area by the year 20##.

**Description of routine construction/maintenance activities.** Applicant conducts routine construction/maintenance activities related to ???road building, etc. Routine construction/maintenance activities have been divided into three categories based on the potential for ground disturbance:

- (1) Category A--No associated ground disturbance
- (2) Category B--Minimal ground disturbance
- (3) Category C--Extensive ground disturbance

Appendix # lists all of the construction/maintenance activities associated with each of the three categories.

### Proposed Best Management Practices

This section presents the Best Management Practices (BMPs) recommended by Applicant to avoid potential impacts to listed and special status species. Each sensitive habitat type is described and there is a discussion of the relationship of the habitat types to individual listed and special status species. Minimization of adverse effects would be accomplished by implementing the following basic steps:

- (1) An **environmental sensitivity training program** is in progress and would continue for all Applicant construction personnel and contract employees to ensure that they are familiar with the sensitive habitat types and the BMPs specified in this opinion and summarized in a management manual.
- (2) The **timing** of maintenance activities would be adjusted to avoid sensitive periods for special status species and their habitat types.
- (3) Qualified biologists would **monitor or mark** sensitive habitat so that it can be avoided by maintenance personnel during specific activities in specific habitat types.
- (4) **Where, when, and how** certain maintenance activities can be performed will be specified.
- (5) Provide partial compensation for lost habitat through **conservation banks** that preserves ecosystems and habitat from development or disturbance.

A qualified biologist would meet the following minimum qualifications:

- (1) Bachelors' degree in biology or related field;
- (2) One year of employment in biology or related field including work associated with the special status species habitats that occur in the project area.

Applicant's Environmental Manager would annually review and update maps and tables documenting occurrences of sensitive habitats and special status species based on GIS records and other existing data available to applicant. Applicant would also review the success and problems encountered with the BMPs defined in this assessment. A report detailing this review would be submitted to the Service by Month Day of each year, beginning in 200#. This report would consist of a table listing the maintenance activities that required BMPs, type(s) of BMPs implemented, date of implementation, results of files search and survey, if applicable, and a summary of potential problems encountered.

Circumstances Requiring Additional Consultation with the Service. Applicant would notify the Service when proposing any site specific construction/maintenance activities. Potential activities that may not be included under the scope of this programmatic biological opinion are, but are not limited to, the following:

- (1) **Incidental take** above the amount identified in this opinion. Incidental take is defined as harm, harassment, pursuit, hunting, shooting, wounding, killing, trapping, capture, or collection of wildlife **or** removal, damage, or destruction of plants of an endangered species.
- (2) Activities outside of the scope of this biological opinion.
- (3) **Emergency actions** or actions to protect human health or biological resources, including actions that minimize the risk of fire or reduce the potential for danger to personnel, would be taken when deemed appropriate by the construction/maintenance supervisor. Applicant would contact the Service within ## hours of the emergency action for consultation.

## **Status of the Species**

### **Animal Species**

XXXXXX

**Species Description and Life History.** Biological information on the XXXXX is available in the recovery plan for this species (citation).

### **Geographic Distribution and Associated Habitat.**

### **Reasons for decline .**

ZZZZZZ

**Species Description and Life History.** Biological information on the ZZZZZ is available in the proposed rule for this species (citation).

**Geographic Distribution and Associated Habitat.**

**Reasons for decline .**

**Plant Species.**

YYYYYY

**Species Description and Life History .**

**Geographic Distribution and Associated Habitat.**

**Reasons for Decline .**

**Environmental Baseline**

The project area encompasses a physically and biologically diverse region that includes ??? Valley the ??? Mountain Range, ??? Plateau, and the foothills of the ??? Mountain Range. These physiographic provinces correspond to four floristic regions: (1) the ??? Range region; (2) the ??? Valley region; (3) the ??? Plateau region; and (4) the ??? region (citation).

Common habitats in the project area include (????montane, grassland, riparian, *etc.*????)

**Animal Species**

XXXXXX

Historic range of the XXXXXX

**Distribution in the Project Area.**

Critical habitat for the XXXXXX is located inside/outside of the project area.

ZZZZZZ

Historic range of the ZZZZZZ

### **Distribution in the Project Area.**

Critical habitat for the ZZZZZ is located inside/outside of the project area.

### **Plant Species.**

YYYYYYYY

Known populations are associated with YYYYYYY

### **Effects of the Proposed Action**

General description of direct and indirect effects, interdependent and interrelated actions.

### **Animal Species**

XXXXXXXX

Adverse effects of the project on XXXXXX may result from several sources. Individual XXXXXX may be injured or killed or harmed or harassed etc by (??? trucks, bulldozers, noise???).

Indirect effects of the project would come from (???urbanization caused by new roads, new water lines associated with housing developments, etc???).

Interdependent and interrelated actions would happen due to the presence of ??roads??. These actions would consist of ???.

Critical habitat would/would not be affected by this action.

ZZZZZ

Adverse effects of the project on ZZZZZ may result from several sources. Individual ZZZZZ may be injured or killed or harmed or harassed *etc.* by (??? instream work, increased water turbidity???).

Critical habitat has not been designated for this species.

### **Plant Species**

YYYYYYYY

Each of the three categories of routine construction/maintenance activities has the potential to modify or destroy ??? riparian habitat, with associated plants including YYYY. Types of impacts may include (???soil compaction, erosion, siltation, contamination, disruption of hydrology, vegetation removal, herbicide application, and introduction of invasive non-native species???).

Indirect effects of the project would come from (???urbanization caused by new roads, new water lines associated with housing developments, etc???).

Interdependent and interrelated actions would happen due to the presence of ??roads??. These actions would consist of ???.

### **Cumulative Effects**

Cumulative effects include the effects of future State, Tribal, local, or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act.

### **Conclusion**

The conclusions of this biological opinion are based on full implementation of the project as described in the Description of the proposed action section of this document, including any conservation measures that were incorporated into the project design. Relevant aspects of the proposed action (including conservation measures) include, but are not limited to, the following:

[list the pertinent measures]

1. ...,
2. ..., etc.

After reviewing the current status of the affected species, the environmental baseline for the action area, the effects of the proposed action, and the cumulative effects, it is the Service's biological opinion project as proposed, is likely/not likely to jeopardize the continued existence of the XXXXX, ZZZZZ or YYYYYY, and is likely/not likely to destroy or adversely modify designated critical habitat for the XXXXX.

Failure to implement the project as proposed (including any relevant conservation measures), or implementation of the project in a manner that causes an effect to listed species or designated critical habitat not adequately considered in this opinion may cause coverage under the incidental take statement of this biological opinion to lapse and will require reinitiation of consultation to ensure compliance with section 7(a)(2) of the ESA.

## INCIDENTAL TAKE STATEMENT

Section 9 of the Act, and Federal regulation pursuant to section 4(d) of the Act, prohibits the take of endangered and threatened species, respectively, without special exemption. Take is defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harass is defined by the Service as actions that create the likelihood of injury to listed species by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering. Harm is defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns, including breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with this Incidental Take Statement.

This incidental take statement is based on full implementation of the proposed [name] project as described in the Description of the proposed action section of this biological opinion, including conservation measures that were incorporated into the project design. Relevant aspects of the proposed action (including conservation measures) include, but are not limited to, the following:

[list the most pertinent measures]

1. ...,

2. ..., etc.

Failure to implement the project as proposed (including any relevant conservation measures), or implementation of the project in a manner that causes an effect to listed species or designated critical habitat not adequately considered in this opinion may cause coverage of section 7(o)(2) to lapse and require reinitiation of consultation to ensure compliance with section 7(a)(2) of the ESA.

The measures described below are nondiscretionary and must be undertaken by Applicant so that they become binding conditions of any grant or permit issued to the Applicant, as appropriate, for the exemption in section 7(o)(2) to apply. Applicant has a continuing duty to regulate the activity covered by this incidental take statement. If Applicant (1) fails to adhere to the terms and conditions of the incidental take statement, and/or (2) fails to retain oversight to ensure compliance with these terms and conditions, the protective coverage of section 7(o)(2) may lapse.

This programmatic biological opinion does/does not allow for take of listed species. Site-specific consultations will allow for additional take/take of species when specific information on project design, timing of project, and amount of take anticipated is known.

!!!(the following section used if take is authorized)!!!

### **Amount or Extent of Incidental Take**

XXXXXX

The Service anticipates that incidental take of XXXXXX will be easy/difficult to detect for the following reasons; XXXXXX has a life-history making it easy/difficult to detect. However, the following level of take of XXXXXX can be anticipated by (???actions???). BMPs proposed by Applicant and described above in the **Description of the Proposed Action**, and below in the **Reasonable and Prudent Measures** will substantially reduce, but not eliminate, the potential for incidental taking of this species during the project. The Service, therefore, anticipates the following levels of take as a result of this proposed project.

Incidental take for XXXX is expected in the form of:

- (A) (???killing by impact of trucks, etc???)
- (B) ## (#) XXXX may be injured due to (???burrow collapse???), or any other activities associated with the proposed project;
- (C) harm through (???grading of roads???); and
- (D) harassment from project related (???noise???).

Incidental take for ZZZZZ is expected in the form of:

- (A) (???killing by culvert placement in streams, etc???)
- (B) number (#) ZZZZZ may be injured due to (???instream work???), or any other activities associated with the proposed project;

To the extent that this statement concludes that take of any threatened or endangered species of a migratory bird will result from the agency action for which consultation is being made, the Service will not refer the incidental take of any such migratory bird for prosecution under the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. §§ 703-712), or the Bald Eagle Protection Act of 1940, as amended (16 U.S.C §§ 668-668d), if such take is in compliance with the terms and conditions (including amount and/or number) specified herein.

If, during the course of the action, this level of incidental take of the above listed species is exceeded prior to the annual review, such incidental take represents new information requiring review of the below reasonable and prudent measures provided. Applicant must immediately provide an explanation of the causes of the taking and review with the Service the need for possible modification of the reasonable and prudent measures.



## Effect of the Take

In the accompanying biological opinion, the Service determined that this level of anticipated take is not likely to result in jeopardy to XXXXX or ZZZZZ, or destruction or adverse modification of critical habitat to the XXXXX.

## Reasonable and Prudent Measures

The reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize the effects of incidental take that might otherwise result from the proposed action. This programmatic opinion will expire ## years from the date of issuance. Issuance of a new programmatic opinion will be subject to evaluation of the recovery of the species.

The Service believes the following reasonable and prudent measures are necessary and appropriate to minimize the impact of take on the XXXXX:

1. Minimize and avoid effects on XXXXX:
  - (A) Minimize and avoid the likelihood of direct loss of XXXX.
  - (B) Minimize and avoid the likelihood of harming and/or harassing XXXXX
  - (C) Minimize and avoid impact of habitat modification or loss to XXXXX
2. Minimize and avoid the effects of (???activities???) on XXXXX.
3. Minimize loss and degradation of listed ZZZZZ habitat and protect from adverse impacts.
4. Avoid and minimize loss of ZZZZZ on the proposed project site and insure success of the BMPs.
5. Avoid and minimize effects on all species through defined measures in the **Project Description**.
6. Submit site-specific biological assessments prior to implementation of any action.

## Terms and Conditions

In order to be exempt from the prohibitions of section 9 of the Act, Applicant must comply with the following terms and conditions, which implement the reasonable and prudent measures described above. These terms and conditions are non-discretionary.

1. The following terms and conditions implement reasonable and prudent measure number one: Applicant shall avoid impacts to XXXXX and its habitat by:
  - (A) Prior to the start of activities, Applicant shall conduct surveys and adhere to the protection measures described the Standardized Recommendations for Protection of

XXXXXX (Attachment #). Applicant shall contact the Service at the beginning of each year to determine if Applicant is using the most current recommendations.

- (B) The following terms and conditions implement reasonable and prudent measure number two:
3. The following terms and conditions implement reasonable and prudent measure number three:
  4. The following terms and conditions implement reasonable and prudent measure number four:
  5. The following terms and conditions implement reasonable and prudent measure number five: All BMPs measures listed in the **project description** shall be implemented. An employee awareness training session where endangered species minimization and avoidance measures and life history are presented shall be videotaped and the videotape shall be submitted to the Chief, Endangered Species Division at the Where Ever Fish and Wildlife Office within #-year of finalization of this opinion.
  6. The following term and conditions implement reasonable and prudent measure number six: Site-specific biological assessments must be prepared prior to implementation of any project. These assessments must contain a complete project description including GIS information showing the exact location of the project and the listed and proposed species and designated and proposed critical habitat occurring in the action area. The exact timing of the project must be included. Additionally, the assessment must determine whether this project fits into the programmatic consultation by showing the effects of the project and how those effects will be minimized/avoided or conservation banking utilized. A precise estimate of the expected level of impact, the amount of take, and the amount of habitat affected or lost must be included. A monitoring program should be described that allows detection of project effects, level of incidental take, exceedance of incidental take number, and effectiveness of minimization/avoidance measures and conservation measures. A monitoring report should be provided to the Service FO at a minimum, annually, but preferentially, quarterly to track project effects, incidental take, and beneficial actions

## Reporting Requirements

The Where Ever Fish and Wildlife Office is to be notified within ##### working days of the finding of any listed species or any unanticipated harm to the species addressed in this biological opinion. The Service contact person for this is the Division Chief for Endangered Species at (###) ###-####. Any dead or severely injured XXXX shall be deposited in the Some Scientific Academy. Any dead or severely injured XXXX shall be transferred to the Fish and Wildlife Service's Law Enforcement Office at Where Ever; telephone (###) ###-####.

An annual report submitted by Month Day of each year that shall detail all activities carried out the previous year. Any take of listed species shall be described in this report with dates and location of the activity resulting in the take.

If, during the course of the action, this level of incidental take is exceeded, such incidental take represents new information requiring review of the reasonable and prudent measures provided. Applicant must immediately provide an explanation of the causes of the taking and review with the Service the need for possible modification of the reasonable and prudent measures.

The Service-approved biologist shall notify the Service immediately if XXXX are found on site as detailed in term and condition ##, and will submit a report including date(s), location(s), habitat description, and any corrective measures taken to protect the XXXX found. The Service-approved biologist shall submit locality information to the Some State Department of Fish & Game, using completed Native Species Field Survey Forms or their equivalent, no more than ## calendar days after completing the last field visit of the project site. Each form shall have an accompanying scale map of the site such as a photocopy of a portion of the appropriate 7.5 minute U.S. Geological Survey map and shall provide at least the following information: township, range, and quarter section; name of the 7.5' or 15' quadrangle; dates (day, month, year) of field work; number of individuals and life stage (where appropriate) encountered; and a description of the habitat by community-vegetation type.

A post-project compliance report prepared by the Service approved monitoring biologist shall be forwarded to the Chief, Endangered Species Division, at the Where Ever Fish and Wildlife Office within ## calendar days of the completion of each project. This report shall detail: (i) dates that construction occurred; (ii) pertinent information concerning the applicant's success in meeting project BMPs measures; (iii) an explanation of failure to meet such measures, if any; (iv) known project effects on federally listed species, if any; (v) occurrences of incidental take of federally listed species, if any; and (vi) other pertinent information.

The Where Ever Fish and Wildlife Office is to be notified within ## working days of the finding of any dead listed species or any unanticipated harm to the species addressed in this biological opinion. The Service contact person for this is the Chief, Endangered Species Division at (####) ####-####.

## **CONSERVATION RECOMMENDATIONS**

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information. The Service recommends the following additional actions:

1. Applicant should work with the Service to establish functioning conservation banks in appropriate locations to further the conservation of listed species. Such banking systems could also be utilized for other applicant required conservation needs where appropriate.
2. As recovery plans for listed species are developed, Applicant should assist the Service in their implementation.

In order for the Service to be kept informed of actions minimizing or avoiding adverse effects or benefitting listed species or their habitats, the Service requests notification of the implementation of any conservation recommendations.

### **REINITIATION - CLOSING STATEMENT**

This concludes formal consultation and conference on the actions outlined in the request. You may initiate consultation with the Service to confirm this technical assistance as a biological opinion issued through formal consultation if ZZZZ is listed. The request must be in writing. If the Service reviews the proposed action and finds that there have been no significant changes in the action as planned or in the information used during technical assistance, the Service may confirm this opinion as the biological opinion on the project and no further section 7 consultation may be necessary.

The incidental take statement in this opinion does not become effective for the proposed species until such time as the species is listed and the technical assistance is adopted as the biological opinion issued through formal consultation. Should ZZZZ become listed, the project will be reviewed to determine whether any take of the species has occurred. If so, modification of the opinion and incidental take statement may be appropriate to reflect the take. No take of ZZZZZ may occur between the listing of the species and adoption of the technical assistance.

As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to listed species or critical habitat that was not considered in this opinion; or, (4) a new species is listed or critical habitat is designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation. In addition, if Applicant discovers that the conditions of the permit have not been followed, Applicant should review its responsibilities under section 7 of the Act and reinitiate formal consultation with the Service.

If you have any questions regarding this biological opinion, please contact of my staff at (###) ###-####. We appreciate the cooperation of Applicant throughout this consultation process.

Sincerely

Enclosure

cc:

## Literature Cited