Streamlined Consultation Guidance
for
Restoration/Recovery Projects (RRP)

I. Introduction

Conservation planning and implementation by Federal agencies is consistent with the stated policy of Congress declared in section 2(c)(1) of the Endangered Species Act (ESA) "…that all Federal departments and agencies *shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act*." 16 U.S.C. 1531(c)(1). The purposes of the ESA, as stated in section 2(b), are "…to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved…"

Section 7(a)(1) of the ESA directs each Federal agency to carry out programs for the conservation of threatened and endangered species in consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service. Accordingly, many Federal agencies are engaged in numerous activities that are designed with the intent of fulfilling the "conservation" policy of the ESA. Even so, because many of these conservation projects may create short-term, low-level, adverse effects to species and critical habitat associated with these activities, formal consultation is required.

Pursuant to section 7(a)(2) of the ESA, all Federal agencies must ensure that actions they authorize, fund, or carry out, including those intended to support recovery of listed species, are not likely to jeopardize listed species or adversely modify or destroy critical habitat. Proposed Federal actions that may affect listed species or critical habitat trigger the formal consultation procedures under section 7 unless they are not likely to adversely affect those species or critical habitat. If formal consultation is required, section 7 of the ESA and the implementing regulations allow 135 days for the issuance of a biological opinion addressing the proposed action following the initiation of formal consultation.

Given the Service's workload and staffing constraints, we have developed, and continue to develop, ways to enhance efficiency while retaining the effectiveness of the consultation process. This guidance document describes an approach that provides for a streamlined consultation process to be completed in less than 135 days for restoration-recovery projects (RRPs) for which there is a high level of certainty associated with expected beneficial effects.

Through this consultation streamlining process, it is our intent to create administrative incentives for Federal agencies to propose such projects as they use their authorities to implement programs for the conservation of listed species in accordance with sections 2(c)(1) and 7(a)(1) of the ESA.

The 7(a)(2) standard to "insure" against jeopardy and adverse modification typically requires a detailed understanding of numerous factors including the species' population status locally and range wide, its ecology, conservation needs, threats and behavior, as well as, behavioral and population reaction to the stressors caused by the agency action. The analysis documenting that response is often customized on a site-specific basis and cannot be approached in a generic fashion because the species' response to those stressors in that particular setting is not always predictable to the same extent.

In the context of RRPs that meet the screening criteria described below, a more generic/streamlined analysis can be applied because the overall beneficial nature of the proposed action and the scope of effects on listed species and critical habitat are more limited and targeted. Thus, a more concise, yet credible analysis can be developed to support the section 7(a)(2) determinations in the biological opinion, which can be prepared and issued in an abbreviated manner compared to the statutory time requirement of 135 days. It is anticipated that these streamlined biological opinions can be completed in a matter of days or weeks rather than over several months.

II. Criteria for RRP Inclusion in the Streamlined Consultation Process

To be eligible for the expedited consultation process, the proposed Federal action must meet the following criteria:

A. *The project/program must: (1) be developed in consultation with the Service and (2) have the primary purpose of conserving listed species in a manner that is consistent with the recovery needs of the species.*

Projects developed in consultation with the Service for the primary purpose of supporting recovery of listed species (e.g., creating, restoring, managing, maintaining, or enhancing habitat) meet this criterion. The degree of consultation necessary will be influenced by the collective experience of the Service and action agency in implementing projects such as the proposed project. While the projects will most typically be developed at the field level, they may also be developed at regional offices or Headquarters with appropriate field office coordination. All such projects should be derived from and consistent with up-to-date conservation plans (e.g., recovery outlines, recovery plans, 5-year reviews, species status assessments) that are based upon the best available scientific information. This two-pronged criterion is meant to clarify that only this subset of Federal actions are eligible for this process, and to clearly distinguish this class of actions from those actions where conservation benefits are the incidental (i.e., not purposeful) result of regulatory requirements to minimize or mitigate impacts to listed species or critical habitat. When the conservation benefits are incidental, the potential for the proposed Federal action to jeopardize listed species or to destroy or adversely modify critical habitat is not necessarily negated. Such projects will typically require more comprehensive analyses to support the section 7(a)(2) determinations.

B. *Implementation of the proposed project/program must have either a proven track record of successful implementation*[1] *or a high level of certainty*[2] *of producing a beneficial impact (i.e., certainty of successful implementation).*

To qualify for this expedited consultation process, the proposed action must have a proven track record of successful implementation to insure the required beneficial impact criterion (described below) will be satisfied. If there is not a proven track record of successful implementation for the target species, then there must alternatively be a high level of certainty of producing the intended beneficial impact for the target species (or appropriate surrogate). Proposed activities that are experimental and do not have that high level of certainty of successful implementation do not have the requisite reliability to be eligible for the expedited consultation process at this time. Such experimental projects, however, after showing a track record of successful implementation for a reasonable time period, may later qualify for inclusion.

C. *The project/program must produce a beneficial impact to the species*.

To use the expedited consultation process, the proposed action must be likely to produce a beneficial impact to the species or critical habitat that must be consistent with the recovery of the species by improving the species' habitat conditions or conservation status to an extent that will substantially outweigh any adverse effects caused by its implementation. Such projects must over an agreed-upon duration, create a demonstrable, quantifiable, beneficial impact to listed species or critical habitat, and have only short-term, temporary, small magnitude adverse effects and limited, if any, incidental take in order to meet this beneficial impact standard.

The beneficial impact standard can be achieved in many ways. For example, existing threats to a listed species or critical habitat (e.g., human disturbance, predation, habitat loss and degradation, disease, etc.) can be reduced, remediated, or eliminated by the proposed conservation activity. Habitat can be improved, restored, or managed. Conservation benefits can be accrued either directly through means such as predator removal, or indirectly by improving conditions such that aspects of the species' reproductive and survival rates are improved. Beneficial management could include actions to enhance, restore, or maintain habitat (e.g., restoring fire by prescribed burning, restoring hydrological conditions) or could reduce habitat fragmentation impacts, increase habitat connectivity, reduce the effects of catastrophic events, or establish buffers for protected areas.

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[1] "Track record" means that the proposed activity/procedure has been successfully implemented on multiple occasions for the target species.

[2] "High level of certainty" means using known, accepted practices, procedures and techniques that are highly certain to produce the intended response or result. In the case of habitat management, there must be high level of certainty both of the intended response of habitat to the management actions, and the intended response of the species to the habitat changes. Use of similar species or habitat as surrogates is appropriate and consistent with the ESA, its implementing regulations and Service policy.

Inherent in the concept of beneficial impact is the requirement that any initial adverse effects or incidental take of listed species be small in magnitude, temporary, short-term with respect to local populations of listed species and/or units of critical habitat. Conversely, activities that may ultimately produce a beneficial impact, but have adverse effects that are not small in magnitude compared to the benefits to the affected population and are not temporary, do not qualify for the expedited consultation process.

To ensure that each program and/or project implemented is likely to produce a beneficial impact, each of the following factors must be affirmatively addressed in an effects analysis to qualify for the expedited consultation process:

- Adverse impacts (including those that conform to incidental take) are likely to be small in magnitude, temporary (meaning not continuous, recurring, or chronic), short-term and geographically local with respect to each local population being addressed? [*Note: this standard does not preclude those activities that require periodic management actions that may involve limited adverse effects.*]
- The amount or extent of incidental take of listed species is likely to be low, and is not likely to have adverse population-level impacts to the affected listed species.
- The project cannot be likely to cause a permanent net loss of habitat, net loss of habitat function, or net loss of functional value of critical habitat.

Proposed Federal actions to establish mitigation and conservation banks in response to a specific section 7(a)(2) regulatory requirement to minimize and mitigate impacts to listed species (e.g., establishing a mitigation framework or a bank related to specific projects) are not eligible for the expedited consultation process. However, proposed Federal actions to implement discrete habitat restoration and management activities (e.g., controlled burning or vegetation planting) associated with a mitigation or conservation bank may be included if they meet all of the above criteria.