

## **Consultation under Section 7 of the Endangered Species Act with the Caribbean Ecological Services Field Office**

The purpose of this document is to facilitate the initiation of the consultation requirements for Federal Action Agencies under the Section 7 (a)(2) of the Endangered Species Act (Act) with the U.S. Fish and Wildlife Service (Service).

Under the Section 7 (a)(2) of the Endangered Species Act (Act) with the U.S. Fish and Wildlife Service (Service), the Action Agency may designate an applicant or local agency to act as a designated representative. As part of the process, the Action Agency, or the designated representative, must make an effect determination for the proposed project or actions.

The following steps should be followed when conducting an informal Section 7 consultation with the Service:

1. The Action Agency, or designated representative, should obtain a federally listed species list from the Information for Planning and Consultation (IPaC) system. Use the following link <https://ecos.fws.gov/ipac/> to access the system. IPaC will provide a list of potential listed species within the project location, and project guidelines that can be used as conservation measures to avoid or minimize potential adverse effects to the species.
2. Utilizing the project location, project nature, the species and critical habitat information obtained from IPaC, other sources and any other relevant information available for the species the agency needs to make an effect determination.

The Act established three type of effect determinations that are explained below:

### **“No effect” (NE) determination**

This determination is appropriate when reasonable interpretations of best *available* information (data based on the project location, project nature, the species and critical habitat information obtained from IPaC and any other relevant information available for the species) leads the action agency, or designated representative, to conclude that the proposed project would have no effect on any federally listed species or designated critical habitat.

Action agencies should use *primary evidence* to determine whether a species is present in an action area. Primary evidence includes positive survey results, direct observations, animal telemetry studies, tag recoveries, and various physical evidence, such as tracks, hair, feathers, shed skin, eDNA, scat, etc. The Service considers the availability of primary evidence as sufficient basis to conclude that a species is reasonably certain to occur in an action area.

If primary evidence of species presence is not available, action agencies should then consider *secondary evidence*. Secondary evidence is based on habitat conditions within the action area and reasonable inferences from primary data available outside the action area. The presence of suitable habitat in the action area does not establish that a species is present, but combined with other data, may provide a rational basis for concluding that a species is reasonably certain to occur in the action area. Such data include, but are not limited to:

- species occurrence records from locations outside the action area but within a distance that reasonably represents the breadth of the species' home range; and
- migration or dispersal routes that cross the action area, reasonably inferred from occurrence records around the action area.

For NE findings, action agencies should document in their administrative record the basis for concluding that the species is not reasonably certain to occur in the action area, or that the action will not cause any environmental changes (stressors) that are relevant to the species. Such stressors include those caused by other activities that would not occur but for the action (*i.e.*, interrelated and interdependent actions).

If a lengthy or nuanced explanation is necessary to support a NE finding, then that determination it is probably inappropriate. Agencies should render NE determinations using evidence that does not require elaborate interpretation.

Consultation with the Service is not mandatory if an action agency determines that an action will have no effect on species or CH that may be present in the action area, as identified by IPaC or other means confirmed by the Service. CH will not appear on species lists if the action area does not overlap any designated units of CH.

**Example:** A “no effect” determination may be used if after examining primary and secondary evidence, no federally listed species are found in or near the project site, or if no suitable habitat for the species exists (e.g., project is located in urban area, inside a building, parking lot, hay field etc.) within the project's site.

**“May affect, but not likely to adversely affect” (NLAA) determination:**

This determination is appropriate when reasonable interpretations of best *available* information (data based on the project location, project nature, the species and critical habitat information obtained from IPaC and any other relevant information available for the species) leads the action agency, or designated representative, to conclude that a listed species and/or CH are reasonably certain to occur in the area of the proposed action/project, and that the proposed action will cause any stressors (physical, biological, or chemical changes; activities, disturbance) that are relevant to that species but that the impact from the proposed action species will not jeopardize the species, and that it is likely to destroy or adversely modify a CH. This determination is also known as an informal consultation.

The implementation of conservation measures as part of a proposed action may reduce the amount or extent of exposure to stressors by situating action components or timing them to avoid or minimize overlap with species and/or the features of the CH.

In making a determination, requires answering the following two questions for each species and physical or biological feature of CH that are present in the action area:

- (1) Are one or more individuals of a listed species, or CH, likely to be exposed by the proposed action-caused stressors (including stressors caused by activities that would not occur but for the proposed action)? In other words, is the exposure to the species or CH likely as result of the proposed action?

- (2) Will the responses to such exposure meaningfully, measurably, or detectably adverse? In other words, will the stress from the proposed action cause an adverse response(s) on the species or CH?).

Failure to answer “yes” to *either* of the above questions is the basis for a NLAA determination and for the action agency to request USFWS’s concurrence as outlined below.

However, if the answer is yes to *both* of these questions, then that is the basis for the action agency to proceed to the next determination - **May affect, likely to adversely affect” (LAA) determination.**

**Example:** A "may affect, not likely to adversely affect" determination (NLAA) would be appropriate if the nature of the project, habitat characteristics, and appropriate conservation measures are implemented to the level that the effects to the species are insignificant, discountable or beneficial. If the project includes the use of conservation measures to avoid or minimize the potential impacts to federally listed species, a NLAA is probably the appropriate determination.

The consultation package for a NLAA determination should be sent by email to [Caribbean\\_es@fws.gov](mailto:Caribbean_es@fws.gov). As a minimum, the consultation package should include the following:

- a. A letter with the effect determination for federally listed species or designated critical habitat identified by IPaC (A template is provided below).
- b. An 8.5 by 11-inch copy of the specific site location (we recommend identifying with a red arrow) on a USGS topographic map (1:20,000).
- c. Aerial photos of the project site.
- d. Photos of the project site.
- e. Latitude and Longitude coordinates (degrees/minutes/seconds).
- f. Best *available* information used by the action Agency: For example: as applicable):
  - i. Flora and Fauna Assessments
  - ii. Soil Studies
  - iii. Environmental Assessments
  - iv. Wetlands Delineations
  - v. Environmental Impacts Statement

**“May affect, likely to adversely affect” (LAA) determination:**

If a LAA determination is reached, a formal consultation must be completed. This process requires the submission of a biological assessment or similar documents that analyzes the effects of the project on federally listed species and designated critical habitat. After analyzing that information, the Service will prepare a Biological Opinion to analyze if the project could jeopardize the continued existence of the species, or if it would cause adverse modification of designated critical habitat.

The formal consultation process cannot be delegated. Therefore, it must be completed by the Federal Action Agency. For more information on LAA determinations, please contact us before sending the consultation package

The two tables below provide a generalized map of the sequence of findings described in this document that are necessary to support the determinations made by an action agency. The tables indicate whether the action agency or the Service is responsible for answering the question posed in each row and the corresponding determination. Although the Service must concur with action agency NLAA determinations to conclude consultation informally (questions 3 & 4) and accept LAA determinations to initiate formal consultation (a “yes” answer to question 4).

#### Species (wildlife and plants)

Consultation Question	Answer <sup>1</sup> --> Determination <sup>2</sup> or Next Question		Determination Responsibility	
	No	Yes	Action Agency	Service
1. Got species in the action area?	NE	Go to 2	x	
2. Got stressors relevant to individuals?	NE	Go to 3	x	
3. Got individual exposure to stressors?	NLAA	Go to 4	x	
4. Got individual responses to stressors that are meaningfully, measurably, or detectably adverse?	NLAA	LAA; Go to 5	x	
5. Got a net effect of all individual responses (beneficial and adverse) that reduces action-area population(s) reproduction, numbers, or distribution?	Not Jeopardize	Go to 6		x
6. Got a reduction in action-area population(s) that appreciably reduces likelihood of species' survival and recovery range wide?	Not Jeopardize; Go to 7	Jeopardize		x
7. Got responses that correspond to the definition of take?	Anticipated take = none	Anticipated take from Effects Analysis		x

### Critical Habitat (CH) Physical & Biological Features (PBFs)

Consultation Question	Answer <sup>1</sup> --> Determination <sup>2</sup> or Next Question		Determination Responsibility	
	No	Yes	Action Agency	Service
1. Got CH and PBFs in the action area?	NE	Go to 2	x	
2. Got stressors relevant to PBFs?	NE	Go to 3	x	
3. Got PBF exposure to stressors?	NLAA	Go to 4	x	
4. Got PBF responses to stressors that are meaningfully, measurably, or detectably adverse, or other alterations that preclude/significantly delay the development of PBFs?	NLAA	LAA; Go to 5	x	
5. Got a net effect of all PBF responses (beneficial and adverse) that reduces the conservation value of CH in the action area, or other effects that preclude/significantly delay PBF development?	Not Destruction/ Adverse Mod	Go to 6		x
6. Got alterations of the action area that appreciably diminish conservation value of all designated CH?	Not Destruction/ Adverse Mod	Destruction/ Adverse Mod		x

For your benefit, we developed the following template letter that you can use for for “*may affect, but not likely to adversely affect*” determinations,

Please visit our webpage <https://www.fws.gov/service/esa-section-7-consultation> to obtain more detailed information regarding the consultation process. Should you have any questions, please contact us at [Caribbean\\_es@fws.gov](mailto:Caribbean_es@fws.gov).

\* This is provided only as a sample. Copy and paste the information below and modify as needed.\*

Lourdes Mena  
Field Supervisor  
U.S. Fish and Wildlife Service  
PO Box 491  
Boquerón, Puerto Rico 00622  
Email: [caribbean\\_es@fws.gov](mailto:caribbean_es@fws.gov)

Dear Ms. Mena:

Name Of The Action Agency Or Designee is requesting informal consultation under Section 7 (a)(2) of the Endangered Species Act (Act) (87 Stat. 884, as amended; 16 United States Code 1531 *et seq.*), and in accordance with the Fish and Wildlife Coordination Act (47 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*) for the proposed project Name of the Project, located on Address and coordinates of the Project.

The proposed project consists of Add a detailed description of the Project.

Using the Information for Planning and Consultation (IPaC) system (or other sources eg. Fauna/Flora Survey), we have determined that the proposed project lies within the range of the following federally listed species and critical habitats:

Name of the species	Threatened/Endangered/Candidate
Puerto Rican boa ( <i>Epicrates inornatus</i> )	Endangered
Cobana negra ( <i>Stahlia monosperma</i> )	Threatened

Critical Habitat
Elfin-woods warbler ( <i>Setophaga angelae</i> )

Based on the nature of the project, scope of work, information available, and a careful analysis of the Indicate any information that was used for the analysis. (e.g: IPAC lists, conservation measures that will be implemented, biological studies of the site, etc.), we have made the following effects determinations:

\*Choose an effect determination for each of the listed-species and critical habitats mentioned in the tables above\*

Name of the species	Effect Determination	Conservation Measures that will be implemented
Puerto Rican boa ( <i>Epicrates inornatus</i> )	Not likely to adversely affect (NLAA)	USFWS Puerto Rican boa Conservation Measures 2020

Critical Habitats		
Elfin-woods warbler ( <i>Setophaga angelae</i> )	No effect (NE)	No Conservation Measures

In order to complete the informal consultation process, we are requesting your concurrence for the NLAA determinations included in this letter. Attached to this letter, we are including the documents used to reach our effect determinations for the listed species. If more information is required, please contact Point of Contact at Email address and phone number.

Signature Block

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