

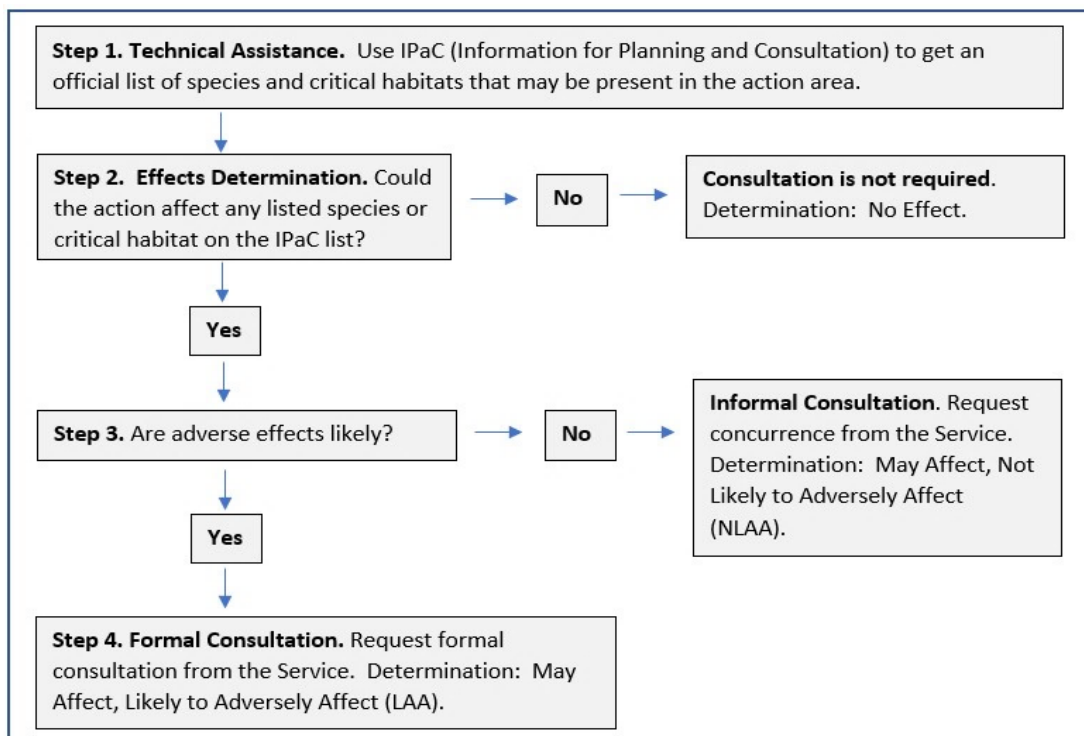
Southern Alaska Fish and Wildlife Field Office (SAFWFO) Endangered Species Act (ESA) Section 7 Consultation Guidance

This guidance is intended to streamline the Endangered Species Act (ESA) section 7 process and provide consistency among federal partners within the U.S. Fish and Wildlife Service's (Service) [Southern Alaska Fish and Wildlife Field Office](#) area and the Alaska Region as a whole. The authority for this guidance comes from [section 7 of the ESA](#) of 1973, as amended (16 U.S.C 1531 *et seq.*), and regulations at [50 CFR 402](#). The ESA and its implementing regulations require federal action agencies, or a designated non-federal representative¹, to consult with the Service when any project or action they authorize, fund, or carry out may affect ESA listed species or designated critical habitat.

We encourage our federal partners to coordinate with our office early and often. We may not be familiar with your action or with the action area, so it is important to provide us with any pertinent and available information needed to help us understand the scale and scope of the proposed action and the effects your action may have on ESA-listed species or designated critical habitat.

The flow chart below provides a simplified visual of the ESA section 7 process. The steps in the flow chart are described in more detail on pages 2-3. We also provide an example consultation request outline, links to online resources, and contact information below.

ESA Section 7 Process



¹ A federal action agency may designate a non-federal representative to conduct informal consultation or prepare a biological assessment by giving written notice to the Service. The ultimate responsibility for compliance with ESA section 7 remains with the federal agency (50 CFR 402.08).

Step 1. Technical Assistance and Use of IPaC

We recommend that federal action agencies utilize the Information for Planning and Consultation tool (IPaC) to get an official list of ESA-listed species and critical habitats that may be present in the action area. Use IPaC and/or the map of the Alaska field office areas to determine which office to contact. Federal action agencies may also request technical assistance at any stage of the section 7(a)(2) consultation process to help the action agency and better inform project planning and implementation.

Step 2. Effects Determination

It is the federal action agency's responsibility to make the effects determination.

If no ESA-listed species or designated critical habitat occur in the action area (as defined in [50 CFR 402.02](#)), or if the proposed action would have no effects to ESA-listed species or critical habitat, a "no effect" determination would be appropriate. If listed species and/or critical habitat are present, but uncertainty exists on whether the action would have impacts to listed species and/or critical habitat, reach out to the Service for guidance. The ESA does not require consultation if the proposed action will result in "no effect" to listed species or critical habitat and you are not required to contact our office. However, the federal action agency should document a "no effect" finding and associated rationale for determining "no effect" for their internal records.

To determine if the action "may affect" listed species or critical habitat, the federal action agency will review the action and evaluate the effects to the species and/or critical habitat. A "may affect, but not likely to adversely affect" determination (NLAA) means that **all** effects are beneficial, insignificant, or discountable. Beneficial effects have contemporaneous positive effects without any adverse effects to the species or habitat. Insignificant effects relate to the size of the impact and should never reach the scale where take² occurs. Discountable effects are those extremely unlikely to occur. Based on best judgement, a person would not (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur. For more information about Informal Consultation or a "NLAA" determination, see *Step 3. Informal Consultation*.

A "may affect, likely to adversely affect" determination (LAA) is the appropriate finding if **any** adverse effects to listed species or critical habitat may occur as a result of the proposed action and the effects are not discountable, insignificant, or beneficial. If the federal action agency determines that the proposed action "may affect, is likely to adversely affect" a listed species or its designated critical habitat, the ESA requires the federal action agency request initiation of formal consultation. See *Step 4. Formal Consultation*.

Note that effects to critical habitat should be considered in terms of impacts to the identified primary constituent elements (PCEs; also known as primary biological features or PBFs). These physical or biological features were identified as essential to the conservation of the species at the time of critical habitat designation and can be found in each critical habitat rule.

² ESA take of listed species is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct ([Section 3 of the ESA](#)).

Step 3. Informal Consultation

For actions that “may affect, but are not likely to adversely affect” listed species and/or designated critical habitat, submit an official memorandum/letter requesting³ concurrence to the Service via email. The request must include the federal action agency’s “may affect, not likely to adversely affect” determination(s) and information sufficient for the Service to determine if it concurs. More specifically, the request should include the project code (e.g., 2024-1234567) from the IPaC-generated species list (see Step 1); a description of the proposed action including the purpose, duration, and location of the action; a map of the action area; effects of the action to the listed species and/or critical habitat; measures intended to avoid or minimize effects of the action to the listed species and/or critical habitat; and effects determinations for each species and/or critical habitat. Please see the example consultation request outline on page 4 for recommended content (also see [50 CFR 402.13\(c\)\(1\)](#) and [50 CFR 402.14\(c\)\(1\)](#) for descriptions of what to include).

Upon receipt of a complete application package, the Service will provide written concurrence or non-concurrence with the federal action agency’s determination(s) within 60 days. The 60-day timeframe may be extended upon mutual consent of the Service, the federal action agency, and the applicant (if involved), but shall not exceed 120 days total from the date of receipt of the federal action agency’s written request.

Step 4. Formal Consultation

For actions that “may affect, likely to adversely affect” listed species and/or designated critical habitat, submit an official memorandum/letter requesting formal consultation to the Service and include a biological assessment (BA) or a biological evaluation (BE)⁴. Please see our Example Consultation Request Outline on page 4 for recommended content. Requests for formal consultation must comply with the requirements of 50 CFR 402.14(c). If you believe your project may result in formal consultation, please contact us (see Step 1) to discuss ways to potentially avoid and minimize effects of the action on listed and/or critical habitat.

Within 90 days after receipt of a complete consultation package, the Service will review all relevant information provided by the federal action agency, evaluate the current status and environmental baseline of the listed species or critical habitat, and evaluate the effects of the action and cumulative effects on the listed species or critical habitat. Within a total of 135 days, the Service will deliver a final biological opinion⁵ to the federal action agency. The biological opinion will include an exemption to incidental take, reasonable and prudent measures, terms and conditions, and conservation recommendations (as applicable). The Service may make the

³ A request for informal and formal consultation may be submitted in the same request, however, separate effects determinations must be made for each species and/or critical habitat.

⁴ Although federal action agencies are not required to prepare a BA for many of the projects in the Alaska area, the action agency must provide the Service with an evaluation on the likely effects of the action, and this is often referred to as a BE. A BE is a generic term for all other types of analyses. The Service uses a BE to decide if concurrence with the agency’s determination is warranted. Recommended content is the same for both a BA and BE.

⁵ The intent of a biological opinion is to analyze the effects of the proposed action to the listed species or designated critical habitat. The conclusion of the biological opinion will state whether the federal agency has ensured that its action is not likely to jeopardize the continued existence of a listed species and/or result in the destruction or adverse modification of critical habitat.

draft biological opinion available to the federal action agency upon request. The timeline may be extended upon mutual consent of the Service, the federal action agency, and the applicant.

Example Consultation Request Outline⁶

1. Cover Letter/Memorandum

- Purpose of consultation (request for informal or formal consultation).
- Project title.
- Project code and/or a copy of the IPaC-generated list of ESA-listed species.
- Effects determination for each ESA-listed species or critical habitat that may be affected by the proposed action (“*may affect, not likely to adversely affect*” or “*may affect, likely to adversely affect*”).

2. Description of the Proposed Action

- Purpose of the action.
- Duration and timing of the action.
- Location of the action, including maps, figures, and a GIS shapefile of the action area.
- Specific components of the action and how they will be carried out.
- Any other available information related to the nature and scope of the proposed action relevant to its effects on listed species or designated critical habitat.

3. Description of Effects

- For formal consultation, describe the affected environment and current conditions for each species in the action area. Include cumulative effects of State and private actions in the action area.
- For formal consultation, list other formal consultations you have conducted in the area to date.
- For formal and informal consultation, describe the effects of the proposed action on each species and/or critical habitat that may occur in the action area. Connect the project description with the effects

4. Conservation Measures

- Describe any applicant/agency-committed conservation measures taken to avoid or minimize adverse effects or enhance beneficial effects to each species and/or to designated critical habitat.

5. Conclusions

- State effects determinations for each species and/or critical habitat.
- Provide justification for each determination in a logical, well-supported conclusion using the best available scientific and commercial data available.

⁶ A Service office requesting formal consultation will provide the information required by the regulations and is treated as any other action agency. An Intra-Service Section 7 Biological Evaluation Form (Region 7) may be used to submit the required information.

Alaska Communities Determination Key

The Alaska Communities Determination Key (DKey) is a tool designed to streamline the ESA section 7 review of projects occurring in communities across Alaska. If your project occurs in the [community footprint](#), this tool can help you quickly reach an ESA section 7 determination and supply you with the letter you need to move forward with your project. The DKey uses a logically structured series of questions to help the user determine whether a project qualifies.

To get started, visit the [Information for Planning and Consultation webpage](#). The DKey will be available after you have entered project specific information, including the location in Alaska. A general [tutorial on using a determination key](#) is available online. The determination key will only be available if your project overlaps with the range of ESA-listed species. Rationale for all effects determinations under this DKey can be found in the [Standing Analysis](#).

Online Resources

The table below includes links to some resources that may be helpful in obtaining information when requesting ESA section 7 consultation.

Resource	Description
Information for Planning and Consultation (IPaC)	Project planning tool that streamlines the Service's environmental review process. This tool can quickly and easily help identify Service-managed resources and suggest conservation measures for your project.
Endangered Species Act (ESA)	PDF of the Endangered Species Act.
Regulations for Interagency Cooperation	Code of Federal Regulations for Part 402 Interagency Cooperation Endangered Species Action of 1973, as amended.
Endangered Species Consultation Handbook	PDF outlining procedures for conducting consultation and conference activities under section 7 of the ESA.
Environmental Conservation Online System (ECOS)	Provides information and maps regarding threatened and endangered species. Allows viewing of section 7 consultations that have issued biological opinions.
Alaska Fish and Wildlife Field Offices	Northern and Southern Alaska FWFO webpages. Includes map of the field office area and describes what we do.

Contacts

Office	Contact
Northern Alaska Fish and Wildlife Field Office	Fairbanks_ES@fws.gov , 907-456-0203
Southern Alaska Fish and Wildlife Field Office	ak_fisheries@fws.gov , 907-743-9173