

From: [Lennon, Tiernan](#)
To: [Elizabeth Stout](#)
Subject: Fwd: Timing of ESA Section 7 Formal Consultation
Date: Monday, May 9, 2016 11:44:30 AM

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From: **Amanda Mardiney** <Amanda.Mardiney@ferc.gov>
Date: Tue, May 3, 2016 at 11:21 AM
Subject: Re: Timing of ESA Section 7 Formal Consultation
To: "tiernan_lennon@fws.gov" <tiernan_lennon@fws.gov>

Hi Tiernan,

Thanks for sending this excerpt. I asked a few of the senior biologists here at FERC about this.

This is the typical FERC process for completing formal Section 7 consultation:

We typically submit the BA and request formal consultation with the DEIS or EA. Issuing conditional determinations is necessary for pipeline projects due to applicants not always having survey access prior to the Certificate. There is usually enough time between the DEIS and FEIS for formal consultation to be completed (which can take up to 135 days). Most FWS offices understand this and will accept the BA or DEIS as the BA, acknowledging that there are surveys that still need to be completed and our conditions would cover any additional consultation. We would just have to re-initiate formal or informal consultation if the additional surveys were to identify endangered species.

Note: When we issue the Certificate - that does not authorize them to begin construction. The Certificate contains conditions that the applicant must satisfy. One of those conditions is that they must complete all outstanding surveys and complete Section 7 consultation if necessary. When the Certificate is issued they gain eminent domain rights. The applicant can then do any outstanding surveys. The applicant then submits a document to the docket that proves that they have satisfied all conditions- including any outstanding issues with ESA Section 7. **After we ensure that all conditions have been satisfied**, we give them a written and signed Notice to Proceed to begin construction.

Also, to address your concern about the MVP applicant prepared BA: We can certainly send MVP's second draft to your office for your comments at your request. That will definitely make it easier for us and for you when we officially submit the BA to request formal consultation. The schedule is tentative, but we expect to issue the DEIS and submit the BA to request formal consultation around August/September 2016.

If you would like more clarification (completely understandable) Christine Allen, a senior biologist at FERC, has offered to talk this through with you. Let me know and we can set up a call!

Amanda Mardiney

Environmental Biologist

Federal Energy Regulatory Commission

202-502-8081

From: Lennon, Tiernan [mailto:tiernan_lennon@fws.gov]
Sent: Thursday, April 21, 2016 3:55 PM
To: Amanda Mardiney
Subject: Re: Mountain Valley Pipeline Project

Hey Amanda - I thought this excerpt from the ESA Section 7 Consultation Handbook (4-11) might be helpful.

(B) Coordination with other environmental reviews Formal consultation and the Services' preparation of a biological opinion often involve coordination with the preparation of documents mandated by other environmental statutes and regulations, including the Fish and Wildlife Coordination Act (FWCA) and the National Environmental Policy Act (NEPA). Although other environmental reviews may be processed concurrently with a section 7 consultation package, they should be separate entities. The contents of the biological opinion and incidental take statement, including the discussion of effects to listed or proposed species

and/or critical habitats, and appropriate measures to avoid or minimize those effects, may be addressed in the Service's comments and recommendations under the FWCA, section 404(m) of the Clean Water Act, NEPA, and other authorities. The section 7 consultation package may be prepared as a stand-alone document under separate signature, or one cover transmittal may be used as long as the consultation package is identified as a separate entity. The Services should assist the action agency or applicant in integrating the formal consultation process into their overall environmental compliance. A major concern of action agencies is often the timing of the consultation process in relation to their other environmental reviews. For example, since the time required to conduct formal section 7 consultation may be longer than the time required to complete preparation of NEPA compliance documents, the action agency should be encouraged to initiate informal consultation prior to NEPA public scoping. **Biological assessments may be completed prior to the release of the Draft Environmental Impact Statement (DEIS) and formal consultation, if required, should be initiated prior to or at the time of release of the DEIS. Early inclusion of section 7 in the NEPA process would allow action agencies to share project information earlier and would improve interagency coordination and efficiency. At the time the Final EIS is issued, section 7 consultation should be completed. The Record of Decision should address the results of section 7 consultation.**

On Mon, Apr 11, 2016 at 12:33 PM, Amanda Mardiney <Amanda.Mardiney@ferc.gov> wrote:

Good morning, Tiernan. I am the biologist working on MVP at FERC and wanted to reach out to you if you would like to discuss issues that you are having with the applicant. Nancy told me that you were confused about the schedule and deadlines. To my knowledge, at this point in the process we are requesting your comments on the draft BA that MVP has submitted to your office. We will incorporate your comments in the final BA (which FERC will officially submit to FWS at a later date). Paul is the MVP project manager at FERC, and he has not set a definite schedule. Typically Section 7 consultation for an EIS is ongoing until FERC gives the applicant the Notice to Proceed to begin construction (Section 7 has to be complete in order for the applicant to begin construction), so you should not feel pressured to make any official determinations at this point in time.

Feel free to give me a call at 202-502-8081 anytime this week.

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[Tiernan Lennon](#)

Fish and Wildlife Biologist

West Virginia Field Office

U.S. Fish and Wildlife Service

694 Beverly Pike

Elkins, WV 26241

304-636-6586 Ext. 12

Fax: 304-636-7824

Tiernan_Lennon@fws.gov

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[Tiernan Lennon](#)

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Fax: 304-636-7824

Tiernan_Lennon@fws.gov