



U.S. Fish & Wildlife Service

# Consultations with Federal Agencies

## *Section 7 of the Endangered Species Act*

The purposes of the Endangered Species Act (ESA) are to provide a means to conserve the ecosystems upon which endangered and threatened species depend and provide a program for the conservation of such species. The ESA directs all Federal agencies to participate in conserving these species. Specifically, section 7(a)(1) of the ESA charges Federal agencies to aid in the conservation of listed species, and section 7(a)(2) requires the agencies to ensure that their activities are not likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitats.

### **How does the consultation process support the recovery of species and their ecosystems?**

The Ecological Services Program of the U.S. Fish and Wildlife Service (Service) uses section 7 tools in partnership with other Service programs and Federal agencies to collaboratively solve conservation challenges and create opportunities using section 7 consultations to recover the ecosystems of listed species. Consultations also provide ways to collaborate with Federal agencies to implement recovery tasks addressing threats to listed species.

### **What is the consultation process that occurs under section 7(a)(2)?**

The provision under section 7 that is most often associated with the Service and other Federal agencies is section 7(a)(2). It requires Federal agencies to consult with the Service to insure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of any listed species or destroy or adversely modify designated critical habitats.



USGS

*In response to requests for consultations from the U.S. Coast Guard with regard to manatees and sea turtles, the Service's South Florida Office provided guidance on events such as firework displays, regattas, boat parades and races, and fishing tournaments. IPaC users can screen projects using this guidance and receive automated responses.*

The Service issued regulations in 1986 (most recently modified in 2019) detailing the consultation process. We have issued a handbook describing the process in detail; it is available on our website at [www.fws.gov/endangered/esa-library/pdf/esa\\_section7\\_handbook.pdf](http://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf).

### **What is the Service doing to facilitate the consultation process?**

Designing projects in ways that are compatible with the conservation needs of listed species and their ecosystems is among the most effective methods of ensuring a more rapid and efficient section 7 consultation process, as well as species' recovery. The Service provides tools through our Information for Planning, and Consultation (IPaC) system that help agencies, their applicants, and other project proponents with the

section 7 consultation process. IPaC streamlines the consultation process by providing automated Species Lists, Determination Keys, and analysis tools based on listed species conservation needs. For more information, visit <https://ecos.fws.gov/ipac>.

### **How does a consultation get started?**

Early coordination is one of the most effective methods of (1) streamlining section 7 consultation, (2) reducing the need to make project modifications later during the consultation process, and (3) improving the ability of section 7 to fulfill its role as a recovery tool. Federal agencies, applicants, and the Service engage in early coordination to explore methods of integrating proposed activities with the conservation needs of listed species before the proposed actions are fully designed.

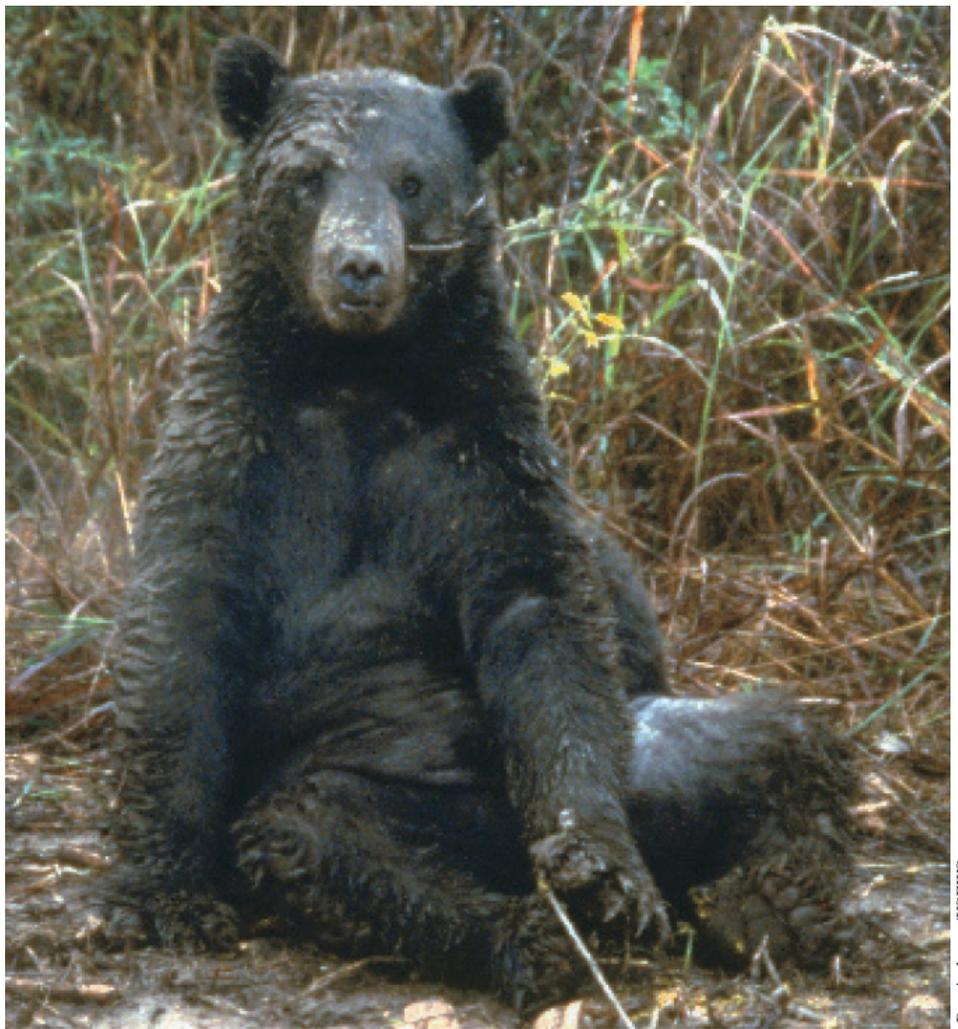
Before initiating an action, the Federal agency or its non-Federal permit applicant should visit IPaC to see which species and critical habitats may be present within their action area. If a listed species or critical habitat may be present, the Federal agency must determine whether the project may affect it. If so, consultation is required. If the action agency determines (and the Service agrees) that the project is not likely to adversely affect a listed species or designated critical habitat, and the Service concurs in writing, then the informal consultation is concluded and formal consultation is not required.

### **What happens if a Federal project may adversely affect a listed species?**

If the Federal agency determines that a project is likely to adversely affect a listed species or designated critical habitat, the agency initiates formal consultation by providing information with regard to the nature of the anticipated effects to the Service (50 CFR 402.14(c)).

The ESA requires that consultation be completed within 90 days, and the regulations allow an additional 45 days for the Service to prepare a biological opinion. The analysis of whether or not the proposed action is likely to jeopardize the continued existence of the species or destroy or adversely modify designated critical habitat is contained in the biological opinion. If a jeopardy or adverse modification determination is made (rare), the biological opinion must identify any reasonable and prudent alternatives (if available) that could, through modifications, allow the project to move forward.

If the Service anticipates that incidental take (harm, harass, etc.) is reasonably certain to occur from the proposed project, that take is described in an incidental take statement accompanying the biological opinion. This incidental take statement exempts the take from the ESA's take prohibition (section 9). The statement may contain clear measures and terms and conditions designed to reduce the impact of the anticipated take. The exemption of incidental take is contingent upon the Federal agency,



Dan Anderson/USFWS

*This Louisiana black bear was one of the largest ever captured on Tensas River National Wildlife Refuge, weighing more than 400 pounds. The bear was trapped using a leg-hold cable snare that does not injure the animal. The biological information obtained, including weight, sex, a tooth for aging, and other measurements, was part of the Service's research effort that aided the recovery of this subspecies. Afterwards, the bear was released on site.*

or applicants, carrying out the measures and terms and conditions.

### **What is the consultation workload?**

In Fiscal Year 2019, the Service assisted Federal agencies in carrying out their responsibilities under section 7 on more than 71,000 occasions. More than 56,000 of these were streamlined by IPaC. The vast majority were Official Species List requests, technical assistance, and informal consultations on actions that were not likely to adversely affect listed species or their designated critical habitat. Many projects, as initially planned, would have had adverse impacts to listed species, but through informal consultation and collaboration with the Service, the Federal agency was able to make

changes to the project design to avoid adverse impacts to listed species or critical habitat.

### **What type of guidance is available for other Federal agencies?**

Guidance is available at [www.fws.gov/endangered/what-we-do/consultations-overview.html](http://www.fws.gov/endangered/what-we-do/consultations-overview.html). Please call 703-358-2171 if you have any questions, or visit [www.fws.gov/endangered/regions/index.html](http://www.fws.gov/endangered/regions/index.html) to locate a Service office in your area.

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