

Frequently Asked Questions Streamlined Consultation Guidance for Restoration/Recovery Projects (RRP)

Which agencies can use this streamlined consultation process?

This consultation process is intended to be used for *all projects* that meet the *Criteria for Inclusion* in the guidance, so *all agencies* including all U.S. Fish and Wildlife Service (Service) programs, can use this process.

How is the RRP process any different than “typical” formal consultations we are doing now?

The only real difference is that this nature of this subset of conservation/recovery projects designed to produce a net conservation benefit precludes the need for comprehensive, species-level analyses, and instead focuses only on the specific beneficial impacts, and low-level adverse impacts within the action area.

How do we justify the very narrow focus in both the environmental baseline discussion and the effects analysis compared to the more comprehensive review we typically do?

The conservation/recovery nature of these projects and the specific Criteria for Inclusion limit the use of this guidance to projects that are precluded from jeopardizing listed species or destroying or adversely modifying critical habitat. Therefore, we only need to focus on the ecological, habitat, and species factors that are affected by the proposed action to insure the Criteria for Inclusion are met and to assess the incidental take. Those other factors lose their relevance in the context of a Restoration/Recovery Project.

Is the RRP process *required* for all projects that meet these criteria?

No, the RRP process is an optional, streamlined means of section 7 compliance for restoration/recovery projects that require formal consultation. The Service encourages its use to achieve better conservation more efficiently, and to promote additional conservation projects by significantly reducing the administrative workload and timeframe for completing these formal consultations. Regions and field offices are encouraged to maximize the guidance’s utility.

Does the RRP process supersede existing consultations that would meet the *Criteria for Inclusion*?

No, but if existing programmatic consultations could be retrofitted to achieve the same or better conservation with better administrative efficiency, then the Service supports that effort.

Does the RRP process apply only to *listed* species or could it also be used for *proposed* species?

The RRP process does not change any existing regulatory authorities under section 7 of the ESA; it only clarifies applicability of the consultation process for a special subset of conservation projects. So, yes, the process can be used for proposed species.

The RRP Biological Opinion (BO) instructions indicate that the Service should insert text directly from the Biological Evaluation/Assessment (BE/BA) into the BO. Can we do that?

Yes. Since this subset of projects, by their nature are cooperative efforts between the Service and another action agency (or other Service program), the project must be jointly developed in coordination with the Service's Ecological Services Program (or whichever Service program has been delegated section 7 implementation authority in that Region). Consequently, because the BE/BA will be developed by/or with substantial input and guidance from the Service, the Service has ownership in the document and is, therefore, entitled to rely upon that information in the BE/BA and use it the BO.

Is there a specific time frame required for completion of the BO for RRP's?

No. However, given the significant streamlining of the process, we anticipate that BOs would be delivered in a matter of days or weeks, rather than months.

How long are these BOs expected to be?

We anticipate that these BOs could often be completed in 10 pages or less, depending on the scope and complexity of the project.

How do we interpret the second part of Criterion A pertaining to the requirement that the project have "the primary purpose of conserving listed species?" Does that mean all projects that aren't developed primarily for conservation/recovery *aren't* eligible for this process?

While not all agency projects start out with the specific intent of conservation/recovery of listed species, when a project is created or modified to such an extent that it achieves a recovery standard, it can then be considered to have met *this part* of Criterion A. So if the project as modified, can also meet the remaining Criteria B and C, such projects are eligible for the RRP streamlined consultation process. For example, when the U.S. Army Corp of Engineers is consulting on permitting the replacement of an undersized, storm-damaged culvert in a stream occupied by listed salmon, if the replacement culvert is enlarged to remove obstructions, eliminate upstream ponding, and restore free passage of Atlantic salmon and is now considered a

recovery action, then the Service would consider this project as satisfying the “primary purpose” aspect of Criterion A.

How do we interpret Criterion B that requires a “proven track record” or a “high level of certainty” of producing the beneficial impact?

The important concept here is that in order to clearly qualify as a restoration/recovery project that requires less analysis and scrutiny, the intended beneficial impact results must be sure to occur. In other words, well-intentioned projects that are largely experimental are not eligible for this process if there is a high level of uncertainty of a successful, beneficial outcome. That does not preclude, however, experimental projects that can still meet this standard. For example, if a project is intended to create favorable forest habitat conditions for a listed species for which this activity has not been previously attempted, the Service must then assess two questions. First, has the forest management action (e.g., a prescribed burn) been done before and can it be done again with a high level of certainty of obtaining those specific desired habitat conditions (e.g., early successional habitat)? If “yes,” then is there a high level of certainty that the listed species will benefit from that new condition? If there are no studies that document this result, is there a similar species that is reasonable to use as surrogate? If so, best available information and best professional judgement can still lead to high level of certainty. If those conditions along with Criteria A and C are met, then the project remains eligible for this process. In the event that an agency wishes to implement a restoration/recovery project for a *newly listed species* for which there is not yet abundant scientific information, then the same standards for determining a “high level of certainty” discussed above apply, which may either justify or preclude use of this streamlined consultation process.

Can this RRP consultation apply to multiple species and what if the RRP beneficial impact standard is not achieved for one of the species impacted by the project?

As many species as can be benefited should be included in these projects. If the proposed action affects one of the species in the action area in such a way that it doesn’t meet the Criteria for Inclusion, then the standard species-level information and effects analyses will have to be completed for *that species* if the project cannot be modified such that all species conform. There could be a single, two-part BO, or a separate BO for the non-conforming species.

Part of Criterion C requires that adverse impacts are “temporary,” so does that mean that “permanent” loss of an individual listed trout egg or larval trout through incidental take is not allowed under this process?

No, it is recognized that small amounts of infrequent, lethal take may occur for some restoration/recovery projects. The “temporary” restriction is intended to be applied more to

impacts to habitat such that there is not a continuous or long term degradation of habitat caused by the project. Additionally, it is recognized that some “permanent” structures may be placed in habitat (e.g., fish passage structures) resulting in “permanent” habitat loss, so the analysis must clearly show that the overall *value, function, and performance* of the habitat is a net beneficial impact to justify those impacts. Additionally, the guidance acknowledges some management/maintenance activities will need to be performed on an infrequent, but periodic basis. These impacts, when measured against the other criterion and overall benefit, may still be acceptable under this process even though they may be “recurring.”

One of the requirements of this process is that the project/program must be “developed in consultation with the Service.” Will the scope and extent of consultation be the same for all projects?

No, this requirement of close coordination between the action agency and the Service is to ensure both agencies are in agreement as to the benefits and adverse impacts so the BE/BA will feed efficiently into the BO. For conservation actions with well-established track records that have been developed through past coordination between the agencies, the scope and extent of this consultation requirement may be reduced compared to consultations with agencies that have not previously developed or implemented such proposed conservation actions with the Service in the past.