

Guidance for Submitting Endangered Species Act Consultation Requests to Florida Field Offices of the U. S. Fish and Wildlife Service

November 2016 (Version 2)

The purpose of this guidance is to assist project applicants in documenting their analyses for actions that may affect federally listed species and to streamline the consultation process. Federal agencies are required to determine whether their actions may affect listed or proposed species, including plants, and designated or proposed critical habitat (henceforth, referred to as **protected resources**). If the agency determines that their action will have no effect on protected resources, there is no further requirement to consult with the Service. Once a “may affect” determination is made, the Federal agency consulting with the Service may either; 1) request our concurrence with a “may affect, but not likely to adversely affect” finding, or 2) request initiation of formal consultation for determinations of “may affect, likely to adversely affect.” Both determinations should include a written analysis explaining the determination. This analysis is typically transmitted in a document referred to as a Biological Assessment (BA) or Biological Evaluation (BE). For section 7, the BA and BE documents are for the same purpose, and hence for this guidance, we will refer to the written analysis submitted to the Service by an action agency in order to initiate consultation as a Biological Assessment. For projects that will adversely affect protected resources, we strongly recommend that you contact one of the Florida field offices for technical assistance before preparing or submitting a final initiation package (North Florida Ecological Services Field Office, Jacksonville, Florida (904) 731-3336; Panama City Ecological Services Field Office, Panama City, Florida (850) 769-0552; and South Florida Ecological Services Field Office, Vero Beach, Florida (772) 562-3909).

Biological Assessments may serve multiple purposes, but the primary role is to document an agency’s conclusions, and the rationale to support those conclusions, regarding the effects of their proposed actions on protected resources. Although there are no statutory or regulatory mandated contents for a BA, recommended elements are identified at 50 CFR §402.12(f). The following outline and checklist will assist project applicants in submitting all of the information needed to fully assess the proposed impacts and to initiate consultation with the Service. The Service consults on the project as presented to us. If the Service needs additional information, you will receive correspondence from the Service stating that “consultation cannot be initiated until the Service receives the missing information.” We suggest that the action agency use the *Endangered Species Act Consultation Request Form* and attach it to your initiation package when initiating consultation to help expedite the process.

A complete initiation package will include the following:

- Endangered Species Act Consultation Request Form (see attached)
- Cover Letter - Include a cover letter that indicates you are submitting a Biological Assessment for a particular project and for a particular applicant. It is helpful if you summarize your determinations and explicitly request an action from us, e.g., request that we



concur with your “may affect, but not likely to adversely affect” determination or initiate formal consultation.

- Project Description - Describe the project or action; the project location (include latitude/longitude and maps); when the action is expected to occur, including a time line or implementation schedule; who would conduct the action and under what authority, including the name and address of the applicant; and the equipment expected to be used or how the action will be accomplished, *e.g.*, bulldozer, tractor, feller-buncher, chain saw, steam roller, etc. If it is multi-phased, describe the what, when, where, and how of each phase separately.
 - Indicate clearly whether standard protective measures for species (*e.g.*, eastern indigo snake, West Indian manatee, plants, etc.) will be included in the proposed action. Describe your analysis using the species key.
 - Describe any species and habitat avoidance, minimization, mitigation, and conservation measures that will be implemented as part of the action to avoid, reduce, or eliminate adverse effects or that would benefit protected resources. Examples may include; 1) species or habitat work windows, 2) on-site or off-site mitigation, 3) use of Best Management Practices, and 4) conservation bank credits purchased.
- Describe the Action Area - For determining whether a protected resource may be present, it is necessary to delineate the “action area.” Action area is defined as all areas that may be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action. It encompasses the geographic extent of environmental changes (*i.e.*, the physical, chemical and biotic effects) that will result directly and indirectly from the action. The action area is typically larger than the area directly affected by the action.
 - Describe the physical and biological attributes of the action area (*e.g.*, topography, vegetation, habitat conditions and trends). Include a map delineating where the action will occur and the geographic coordinates of the center of the project. Also, identify any management or other activities already occurring in the area. Provide a shapefile or other GIS layer of the proposed project footprint and action area.
- Identify Protected Resources that may be present - List all protected resources that may be present in the action area and cite where you obtained this information. You may submit your own list to the Service or generate a list directly from the Service’s website (<http://ecos.fws.gov/ipac/>). We recommend including candidate species, in addition to all proposed or listed species and proposed or designated critical habitat. Although not required by the Endangered Species Act, the Service encourages partnerships to conserve candidate species since these species may warrant future protection. If you determined that a particular species may be present in the general area, but not in the action area, we recommend you identify that species and explain why you believe it is not present in the action area. This serves two purposes: 1) it will provide documentation for your administrative record, and 2) it will avoid the need for additional correspondence with us regarding that particular species



if it later becomes listed. If a species is missing from the list, we will either ask you for an explanation of why the species would not be present in the action area or describe to you why we believe it is likely to be present.

- Describe the current population status and habitat conditions within the action area for each species that may be present.
 - For critical habitat, identify the physical or biological features that are essential to the conservation of the species and that occur in the action area. For a description of the physical or biological features, refer to the rule in the *Federal Register* that designated the critical habitat.
- Describe How the Action May Affect Each Protected Resource - This section should document your conclusion and supporting rationale. Document your analysis of the what, when, and how each protected resource will be exposed to or affected by the action, and how those individuals or habitats are likely to respond to this exposure. Remember that you must consider effects that may occur later in time (*e.g.*, after completion of initial construction). If species experts were contacted, include a summary of the conversations/conclusions reached. Include the references for the literature that your analysis relied upon.
- Make a Section 7 Finding for Protected Resources - You will need to make a finding/determination for each of the protected resources that may be affected by the proposed action. Your conclusion should be explicit. Generally, one of the following three determinations will apply:
- **"No effect"** means there will be no impacts, positive or negative, to protected resources. Generally, this means no protected resources will be exposed to the action and its environmental consequences. Concurrence from the Service is not required. If you have made this determination for any species or critical habitat, you should document these findings in your administrative record. *No coordination with the Service is required.* However, if you are unsure or have questions, the Service is always available to provide technical assistance.
 - **"May affect, but not likely to adversely affect"** means that all effects are beneficial, insignificant, or discountable. Beneficial effects have contemporaneous positive effects without any adverse effects to the protected resources. Insignificant effects relate to the size of the impact and include those effects that are undetectable, not measurable, or cannot be evaluated. Discountable effects are those extremely unlikely to occur. *These determinations require written concurrence from the Service under Informal Consultation.* If you used a Programmatic Biological Opinion (BO) or Key to make these determinations, follow the instructions found in those documents and clearly document the steps you followed in applying the Programmatic BO or Key.



- **"May affect, and is likely to adversely affect"** means that protected resources are likely to be exposed to the action or its environmental consequences and will respond in a negative manner to the exposure. *These determinations require Formal Consultation and preparation of a BO by the Service.*
- Include Relevant Reports and/or Documents - Results from species or habitat surveys, and any associated GIS layers, should be included in your consultation package. If available, Service protocols for surveying listed species should be used. Please coordinate with the appropriate Service Field Office prior to conducting these surveys to ensure that your data will be accepted. If a survey was conducted, include a description of the survey methodology. It is important to note the specifics of your methodology. Explain the scope of the survey; did the survey cover the entire action area or only part of it? Identify who did the survey and when. Supporting documents such as environmental assessments, permit applications, engineering drawings, or other planning documents are helpful for our review. Provide copies of supporting documentation, especially any agency reports or data that are not readily available. Any other information identified as required in species-specific guidance documents should also be included. Additional checklists and guidance are being developed and should be referenced and included in this section as appropriate.
- Complete a Cumulative Effects Analysis - *This step is necessary only if protected resources will be adversely affected and Formal Consultation is necessary.* Cumulative effects are effects resulting from future State or private activities, not involving Federal activities, which are reasonably certain to occur within the action area of the Federal action subject to consultation.
- Include Contacts Made - Prepare a brief history of the contacts you have made with the Service concerning the proposed action. Identify the contact name, type of contact (letter, email, phone conversation, etc.), and approximate date of each contact.
- Provide a List of Preparers - List the names and affiliations of the people that prepared the information being submitted to the Service.
- Document the Literature Cited – Submit a list of any references used in the preparation of the biological assessment.

