

Appendix F

Endangered Species Act Compliance

In brief, to comply with the Endangered Species Act, an evaluation of the affects of any discretionary federal action must be conducted by the action agency in conjunction with informal consultation with the Fish and Wildlife Service. For minor activities, this can be limited to verbal communication. For a larger or more complex action, or for any major construction activity as defined, the action agency is required to prepare a biological assessment. The biological assessment describes the action and evaluates the affect to each species that may be present in the action area by comparing the current condition of the population and habitat to what it is expected to occur during and following the action. A determination is limited to either “no affect,” which equates to no effect at all, positive, negative, or neutral, or to “may affect,” which equates to any effect, positive, negative, or neutral. “May affect” can be further qualified with a determination of ‘likely to adversely affect’ or ‘not likely to adversely affect.’ A “may affect and is likely to adversely affect” determination triggers formal consultation with the Fish and Wildlife Service. A determination of “may affect and not likely to adversely affect” can be addressed with informal consultation with the Fish and Wildlife Service.

Any “may affect” determination triggers formal consultation which may result in either a “not likely to adversely affect” determination or issuance of a biological opinion. Once consultation is requested, the Fish and Wildlife Service has 90 days to render a biological opinion and an additional 45 days to write the biological opinion. The Fish and Wildlife Service usually prepares a draft biological opinion. The period of time that the draft is under review does not count toward the 135 days. Consultation is between the action agency, an applicant if there is one, and the Fish and Wildlife Service. If there is an affect on tribal lands or waters, the tribes must be consulted.

If the Fish and Wildlife Service determines that the proposed action will jeopardize the continued existence of the species by appreciably reducing the likelihood of both survival and recovery of the species in the wild by further reducing its number, reproduction, or distribution (the jeopardy threshold), they prepare a biological opinion which must contain a reasonable and prudent alternative. A reasonable and prudent alternative must be within the jurisdiction of the action agency, technologically and economically feasible, consistent with the original intended purpose of the project, and one that the Fish and Wildlife Service believes will remove jeopardy. The biological opinion must also contain an “incidental take” statement if any take is expected to occur, reasonable and prudent measures, and terms and conditions designed to reduce take and address adverse modification of designated critical habitat. The biological opinion can contain conservation measures, conservation recommendations, and other topics as well. Once the action agency receives the draft biological opinion, they may choose to share the document with other stakeholders (see March 1988 Consultation Handbook, Fish and Wildlife Service).