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Dudley  
ESA Presentation  
Attachment 4a

## CONSULTATION

### When and what form of consultation is appropriate?

All Federal agencies must consult with the appropriate Service when any activity permitted, funded or conducted by that agency may affect a listed species or designated critical habitat, or is likely to jeopardize proposed species or adversely modify proposed critical habitat.

The Service conducts several types of consultations on Federal agency activities, including informal, formal, early and emergency consultations for listed species or designated critical habitats, and informal and formal conferences for proposed species or proposed critical habitats.

- Informal consultations precede formal consultation and may be conducted with the Federal agency, an applicant, or a designated non-Federal representative. Discussions during this phase may include whether and which species may occur in the proposed action area, and what effect the action may have on listed species or critical habitats.

Informal consultation often conclude with the Service's written concurrence with the Federal agency's determination that its action is not likely to adversely affect listed species or their critical habitat, i.e., an exception to formal consultation.

- Formal consultation is conducted when the Federal agency determines its action may affect a listed species or its critical habitat and submits a written request to initiate formal consultation. These consultations follow statutory and regulatory timeframes and procedures, and result in a written biological opinion of whether the proposed action is likely to result in jeopardy to a listed species or adverse modification to designated critical habitat. An incidental take statement is also provided.
- Early consultations are held before an application is actually filed with a Federal agency in order to determine at an early planning stage what effect a proposed action may have on a species or critical habitat and what modifications may be needed to remove or minimize those effects.
- Emergency consultations are held when an agency must respond quickly to a natural disaster or other calamity. These are followed up with a formal consultation.
- Conferences are conducted when it is determined that a Federal action is likely to jeopardize the continued existence of the proposed species or result in the destruction or adverse modification of the proposed critical habitat.

During conference, the Service makes advisory recommendations to the Federal agency on ways to minimize or avoid adverse impacts. If the proposed species or proposed critical habitat becomes listed or designated, respectively, during the life of a project that retains Federal involvement, the Federal agency must then determine whether consultation is required.

**How is jeopardy or adverse modification of critical habitat determined?**

In determining jeopardy, the Service must first look at the environmental baseline, i.e., the present status of the species. Added to the baseline is the direct, indirect, interrelated, and interdependent effects of the Federal action undergoing consultation. The final factor is cumulative effects, which are those State and private actions reasonably certain to occur.

This analysis is then measured against the definition of jeopardy, which is an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

**What are reasonable and prudent alternatives?**

These are alternative actions identified during formal consultation that 1) can be implemented in a manner consistent with the intended purpose of the action, 2) are consistent with the scope of the Federal agency's legal authority and jurisdiction, 3) are economically and technologically feasible, and 4) the Service believes would avoid jeopardy or adverse modification to the listed species or critical habitat.

**What is incidental take and how do is it determined?**

Incidental take is a taking that results from the Federal action, but is not the purpose of the otherwise lawful activity.

Through the analysis of the effects of the action on listed species and critical habitat, the Service may recognize that some individuals or a certain amount of habitat may be taken. An incidental take statement is provided with the biological opinion, and 1) includes the amount (number) or extent (habitat) of anticipated take, if any; 2) reasonable and prudent measures to minimize the take; and 3) nondiscretionary terms and conditions to implement the reasonable and prudent measures, including the procedures used to handle or dispose of any individuals of the species actually taken.