

## Preparing a Biological Assessment

### Endangered Species Act (ESA) Consultation

*The purpose of a biological assessment is to evaluate the potential effects of proposed actions on listed and proposed species and designated and proposed critical habitat and to determine whether any such species or habitat are likely to be adversely affected by the action.*

#### NRCS ESA Policy Overview

NRCS is to conduct an environmental evaluation for all assistance to determine the effects of proposed actions on federally listed species, species proposed for listing, and candidate species; federally designated and proposed critical habitat; and State and Tribal species of concern and their habitats.

Documentation is to include the nature and extent of the effects, and conclude whether the proposed actions will have “no effect” or “may affect” species and their habitats.

- NRCS will use form NRCS-CPA-52, and the T&E worksheet, in determining the effects. Provided in [FOTG](#), Section II – Environmental Evaluation.

#### When a Biological Assessment is Required

When NRCS concludes that an action under NRCS control (NRCS action) “may affect” federally listed species or designated critical habitat<sup>1]</sup>, NRCS must consult with the U.S. Fish and Wildlife Service (Service).

GM 190 Part 410.22(E)(5)

The process of consultation with the Service is initiated by the development of a biological assessment (called informal consultation). Unless, ESA consultation or permitting has already occurred for the action, such as:

- a. NRCS has already received written concurrence from the Service that the proposed action is “not likely to adversely affect” listed species or critical habitat.
- b. The client and the landowner comply with all agreed-to items of an existing biological opinion (formal consultation).
- c. The client and the landowner obtain an ESA Section 10 permit, and NRCS obtains written concurrence from the Services that no further consultation is required.

<sup>1]</sup> If species proposed for listing or proposed critical habitat are present within the action area, the BA is required to address both proposed and listed species/ habitat.

**Policy Reminder:** When NRCS is only providing technical assistance (no NRCS action) and concludes that a proposed action “may affect”, NRCS will recommend alternative conservation treatments that will avoid adverse effects and, to the extent practicable, provide long-term benefit to species. Should the recipient of technical assistance choose an alternative that results in adverse effects, NRCS will not provide assistance for the action. Unless the applicant has obtained as Section 10 permit and NRCS obtains written concurrence from the Services that no further consultation is required. GM 190 Part 410.22(E)(5)

#### Roles and Responsibilities

Per policy, the biological assessment (BA) is prepared by or under the direction of NRCS.

NRCS Environmental Liaison. In New Mexico, the environmental liaison is the State Biologist, responsible for interagency consultation/conferencing under ESA.

NRCS Certified Conservation Planners may prepare biological assessments using the herein approved guidance, if trained in preparing BAs (refer to the training section). Drafted BA’s will be provided to the NRCS environmental liaison to finalize and submit to the Service.

Technical Service Providers (TSPs). In this context, TSPs do not represent NRCS and may not conduct consultations, conferences, or other communication with entities outside of NRCS (GM 190 Part 410.22(E)(9)).

Non-Federal Representatives may be involved in consultation or conference processes (may obtain species lists, prepare BAs, and provide information to the Service). However, NRCS must formally designate the non-Federal representative in writing (provided to the Service). (GM 190 Part 410.22(E)(10))

Partners may assist NRCS on consultations or conferences processes. (GM 190 Part 410.22(E)(11))

- (i) Non-Federal partners may obtain species lists and prepare BAs, but may not conduct consultation or conferences for NRCS. NRCS must review and approve any document prepared by a third party before submitting it to the Service.
- (ii) Federal partners or Tribal governments may obtain species lists and prepare BAs. The Federal partner may also consult or conference for NRCS - as long as NRCS has reviewed and approved the effects assessment. NRCS must receive a copy of the correspondence and, in the case of a biological opinion, will be bound by all reasonable and prudent measures, and terms and conditions contained.

#### Training Opportunities

- AgLearn courses: <http://www.aglearn.usda.gov/>.
- SW Endangered Species Act Team: Developing a Biological Assessment.
- National Conservation Training Center: CSP3116 Interagency Consultation for Endangered Species.
- NRCS National technology support centers will provide training upon request.



## Timeline / Process

**I.** Field/Area office contacts the environmental liaison (NRCS state biologist). All alternatives will be reviewed/reassessed to determine if a practicable alternative exists to avoid the adverse effects. If not, the process of consultation will be initiated.

**II.** Field office notifies the client/landowner that consultation is necessary to proceed, and obtains a written waiver to release personally identifiable information (PII).

**III.** Field office provides the environmental liaison with the information to complete the biological assessment (conservation plan/map, preliminary engineering design, landowner contact information, NRCS-CPA-52, photos, and landowner waiver) and, at a minimum, completes the BA section on Project Description.

**IV.** Once submitted to the Service, the Service will respond within 30 days. This process may be delayed if there are information gaps or complexities.

If the finding is "*may affect, and is likely to adversely affect*". Formal consultation will be required to proceed.

The request for formal consultation will be made by the State Conservationist to the Service. The State Conservationist can decide to forgo formal consultations if resources are not available to enter into consultation. Subsequently, NRCS assistance for the action will be terminated.

## Streamlining Interagency Consultation

NRCS improves the efficiency of interagency consultation efficiencies through programmatic agreements, interagency training, and other streamlining methods.

- Programmatic consultations are located in the [FOTG](#) Section II - T&E - ESA Consultation.
- Streamlining tools are located in the [FOTG](#) Section II - T&E - Related Documents.

## Preparing for Consultation

Landowner Consent. Prior to consultation, NRCS must obtain written consent from the client and the landowner to release personally identifiable information (PII).

- A consent form is provided in [FOTG](#), Section II – Threatened and Endangered.

If consent is not given, NRCS may not pursue consultation and must cease to provide assistance for the action or portion of the action affecting the species or their habitat. (GM 190 Part 410.22(E)(4))

Informal Consultation. Before developing a Biological Assessment, it is strongly recommended to contact the Service for technical assistance.

## References

- USDA, NRCS. Field Office Technical Guide (FOTG). Online at: [http://efotg.sc.egov.usda.gov/efotg\\_locator.aspx](http://efotg.sc.egov.usda.gov/efotg_locator.aspx).
- SWESA. 1999. [Long-Term Strategy for Streamlining Consultation under the Endangered Species Act in AR and NM](#). Section 7 Streamlining Work Group.

## Definitions GM\_190\_410\_A\_410.22(D)

Actions. All activities or programs authorized, funded, or carried out in whole or in part by NRCS in the United States.

Action Area. All areas to be affected directly or indirectly by the proposed action and not merely the immediate area involved in the action (50 CFR Section 402.02).

Biological Assessment. Information prepared by or under the direction of NRCS concerning listed and proposed species and designated and proposed critical habitat that may be present in the action area, and the evaluation of potential effects of the action on such species and habitat. A biological assessment may be a document prepared for the sole purpose of interagency consultation, or it may be a document or documents prepared for other purposes (e.g., an environmental assessment or environmental impact statement) containing the information required to initiate consultation. NRCS is required to provide the U.S. Fish and Wildlife Service (Services) a specific guide or statement as to the location of the relevant consultation information, as described in 50 CFR Section 402.14, in any alternative document submitted in lieu of a biological assessment.

Biological Opinion. States the opinion of the Services as to whether an NRCS action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of designated critical habitat. It also includes a summary of the information on which the opinion is based and a detailed discussion of the effects on the action on listed species or designated critical habitat.

Effects. The direct and indirect effects of an action on the species or habitat, together with the effects of other activities that are interrelated or interdependent with that action, that will be added to the environmental baseline.

Formal Consultation. A process between the Services and NRCS that determines whether a proposed NRCS action is likely to jeopardize the continued existence of a listed species or destroy or adversely modify designated critical habitat. The process begins with NRCS's written request and submittal of a complete initiation package, including a biological assessment. The process concludes with the issuance of a biological opinion and incidental take statement by the Service. If a proposed NRCS action may adversely affect a listed species or designated critical habitat, formal consultation is required.

"Likely to Adversely Affect" (LAA). The determination in a biological assessment (or conclusion during informal consultation) if any (including short-term) adverse effect to federally listed species may occur as a direct or indirect result of the proposed action and the effect is not discountable, insignificant, or beneficial. This determination requires the initiation of formal consultation.

"May Affect." The determination that a proposed NRCS action may result in impacts to a listed, proposed, or candidate species or designated or proposed critical habitat.

"No Effect." The conclusion when NRCS determines a proposed action will not have any measurable affect (either beneficial or adverse) on species and habitats covered by this policy.

"Not Likely to Adversely Affect" (NLAA). The appropriate conclusion when effects on federally listed species are expected to be discountable, insignificant, or completely beneficial. Beneficial effects provide positive effects without any adverse effects to the species. Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. Discountable effects are those extremely unlikely to occur. Based on best judgment, a person would not be able to meaningfully measure, detect, or evaluate insignificant effects, or expect discountable effects to occur.

NRCS Action. Activities in which NRCS exercises (or fails to exercise) control, responsibility, or jurisdictional authority. NRCS action most commonly occurs in the form of Federal financial assistance, but includes other instances where NRCS control or responsibility is exercised (such as approving compatible uses or subordinating NRCS easement rights).

## Appendix 1. Elements of a Biological Assessment

Although there are no statutory or regulatory mandated contents of a Biological Assessment (BA), recommended elements are identified at 50 CFR §402.12(f). The list below highlights the elements that are essential for Service review.

### **Cover Letter**

Indicate that a BA is being submitted for a particular project (name the project). Summarize NRCS's findings and explicitly request an action from the Service "we request your concurrence on ..." or "we request to initiate formal consultation".

### **Biological Assessment Outline**

#### I. Introduction

- A. State the purpose, e.g. "to assess the effects of the proposed action on federally listed species..."
- B. Briefly describe the proposed action.

#### II. Project Description

- A. Divide the proposed actions into project elements (e.g. construction, operation, and maintenance), if applicable.
- B. Describe each element; where it is located (including maps); when the action is going to take place, timeline or implementation schedule; who is doing the action and under what authority; and how the action will be accomplished.
- C. Identify any conservation measures that will be implemented to avoid, reduce or eliminate adverse effects or what would benefit the protected species/habitat.

#### III. Action Area.

- A. Delineate the geographic action area to assist the Service in determining whether a species or critical habitat "may be present". The action areas being all areas that may be affected directly or indirectly by the Federal action (not merely the immediate area involved in the action).
- B. Delineate the specific element action areas, if applicable.
- C. Describe the physical and biological attributes of the action area (e.g., topography, vegetation, condition, trend etc.). If possible, include a map of plant communities and of where the action will occur. Identify the management or activities already occurring in the area.

#### IV. Species/Critical Habitat Considered.

- A. Identify listed and proposed species and designated and proposed critical habitat (referred to as listed resources) that "may be present" in the area. If unsure,

request that the Service provides this list. It is recommended to include Candidate species. If a species may be present in the area, but not within the action area, explain why it would not be in the action area.

B. Document how they were identified where the information was obtained.

C. For each species that may be present, describe the current habitat conditions within the action area. If known, include population status and trend. For critical habitat, identify the primary constituent elements (refer to the listing's Federal Register for this information).

#### V. Effects Analysis.

A. Describe how the action may affect each protected species/habitat. Document NRCS's conclusion and supporting rationale. Ensure that it addresses direct and indirect.

B. Describe the anticipated response (e.g., none, abandoned nests, direct take ect.).

C. For actions "likely to adversely affect" include a cumulative effects analysis.

#### VI. Conclusion and Determination of Effects.

A. For each protected resource, make a Section 7 determination including rationale.

Generally, one of the three findings will be reached. "No effect" means there will be no impacts, positive or negative. If this conclusion is reached, concurrence from the Service is not required. "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 species or habitat. 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. "May affect, and is likely to adversely affect" means that listed resources are likely to be exposed to the action or its environmental consequences and will respond in a negative manner to the exposure.

B. For a "may affect, but not likely to adversely affect" finding, request Service concurrence. For a "may affect, likely to adversely affect" finding, request initiation of Formal Consultation.

#### VII. Literature Cited.

#### VIII. Lists of Contacts/References

If species experts were contacted, include a summary of the conversations and conclusions reached. Include relevant reports such as species surveys.