

## Step 5: The Consultation Process

Section 7 of the Endangered Species Act (ESA) requires all Federal agencies to "consult" with the National Marine Fisheries Service (NMFS) and/or U.S. Fish and Wildlife Service (USFWS) concerning the potential effects of their permit actions on any species listed under the ESA. Section 7 consultation requirements vary based on the determination or level of effect.

For those activities where the Corps has determined that there is "no effect" on listed or proposed-to-be-listed species and designated and/or proposed critical habitat, consultation with the NMFS and/or USFWS is not required. The Corps has developed guidelines for "[No Effect](#)" situations, for both freshwater and marine/estuarine environments.

For those activities where the Corps determines that the proposed work may affect a threatened or endangered species, some kind of consultation with NMFS and/or USFWS is required. There are two types of consultation: informal and formal.

**Informal Consultation** - If the effects of the proposed work on listed species would be beneficial, or the potential adverse impacts are insignificant and discountable, then the Corps determines that the project may affect, but is not likely to adversely affect the species or critical habitat. The Corps then forwards the Biological Evaluation (BE) to NMFS and/or USFWS (based on the species affected) and requests that they concur with the "not likely to adversely affect" determination. Once concurrence is granted, the consultation process ends. If NMFS or USFWS finds that the project will have significant adverse effects on listed species or critical habitat and they cannot concur with the

likely to adversely affect determination, then formal consultation commences.

**Formal Consultation** - If the proposed work may have more than insignificant and discountable adverse impacts to a listed species or critical habitat, then the Corps determines that the project may affect, is likely to adversely affect the species or critical habitat. The Corps then refers the Biological Evaluation (BE) to NMFS and/or USFWS (based on the species affected) to initiate formal consultation. NMFS and USFWS prepare a Biological Opinion (BO) that documents whether the project will jeopardize the continued existence of the species or destroy or adversely modify critical habitat. If the BO finds that the project will jeopardize the species, then the Corps will generally deny the permit. Reasonable and Prudent Alternatives may be proposed in the BO that meet the applicants purpose and will not jeopardize the existence of the listed or proposed species. Projects that will not jeopardize the species must comply with the terms and conditions of the BO. Formal consultation ends with receipt of the BO. Note: Other permit requirements within the application review process may still need to be met after the Section 7 informal or formal consultation has been completed.

**For more information on the Section 7 consultation process, please visit:** [National Marine Fisheries Service \(NMFS\)](#) Includes electronic versions of Biological Opinions issued in the Pacific Northwest and the Public Consultation Tracking System [U.S. Fish and Wildlife Service \(USFWS\) ESA Special Public Notices & Information Papers](#)

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