ATTACHMENT

4.1.D. FEDERAL CONSULTATION PROCESS
Endangered Species*

Federal agency or designated non-Federal representative (SHA) contacts Fish and Wildlife Service/National Marine Fisheries Service (FWS/NMFS) (Service) with a list of species being reviewed or requesting a species list. Service responds within 30 days.  402.12(c) and (d)

Service advises that no listed/proposed species or Critical Habitat (CH) are present.

End 402.12(d)(1)

Service advises that a proposed species/CH may be present.

402.12(d)(1)

Federal Agency must confer with Service. Conclusions reached and recommendations made will be documented and provided to agency. 402.12(d)(1), 402.10 A conference is not necessary if a biological assessment, concurred with by the Service, determines no likely jeopardy. 402.12(k), 402.13(a)

Agency considers the Service recommendation in project development.

Proposed species becomes a listed species?

Yes

Is the project a major construction activity?

Major Federal action under National Environmental Policy Act (NEPA) 402.12(b)(1)

No

Agency or Service find that the non-major action may affect listed species or CH 402.14(a)

No

End

Yes

The procedures for Informal/Formal consultation have been charted.

Informal consultation (402.13) includes all the discussions, correspondence, etc. that lead to a finding by the Service that a listed species or CH would or would not be affected.

Formal consultation begins after the Service finds that a listed species or CH will be affected.

Procedures for Early Consultation (402.11) are intended primarily for private sector application for a Federal permit or license. They are, however, the same as Formal consultation with minor changes in nomenclature.

Applicable Federal regulation is 50 CFR 402.
Recommendations may or may not be used. End

Yes

Agency prepares a Biological Assessment (BA) which includes:
(1) Results of an onsite inspection. Are species or CH present?
(2) Views of recognized experts.
(3) Review of literature and other information.
(4) Analysis of effects of the action.
(5) Analysis of alternative actions. Will BA begin within 90 days? 402.12(e)

No

Agency has option at this point to prepare a BA or initiate Formal Consultation. 402.14(a)(b)

Yes

Agency must verify the accuracy of the species list with Service before BA is completed. 402.12(e)

Yes

• Completed BA (within 180 days) sent to Service Director for review and response within 30 days. 402.12(j).
• Service finds that a listed species/CH is likely to be adversely affected. 402.12(k)
• If agency concludes that there is likely to be an adverse effect it may directly request initiation of Formal Consultation. 402.14(c)

No

End

Yes

FORMAL CONSULTATION
Federal agency initiates Formal Consultation via a written request to the Service Director. To include:
(1) Description of action to be taken.
(2) Description of area that may be affected.
(3) Description of listed species that are likely to be adversely affected.
(4) Description of the effect on the species or CH, and analysis of cumulative impacts.
(5) Description of relevant reports (EIS, EA, BA).
(6) Other pertinent information.

402.14(c), 402.11, 402.13

January, 1988

ES-2 of 6
Does Agency or other authorized party apply for exemption from jeopardy opinion? 402.15(c)

Yes

Application to either:
a) Secretary of Interior, or
b) Secretary of Commerce

Can be made by:
1) Federal agency
2) Governor(s) of a State(s)
3) Permit or license applicant.

Application must be made within 90 days from termination of consultation.

451.02(b),(c),(d),(e)

No

No Federal-aid for project.
End.

Yes

Receipt of application by the Secretary. Review within 10 days to determine whether requirements of 451.02(c), (d), (e) are met?
451.02(f)(1)

No

Applicant may resubmit during the 90-day period.
451.02(f)(2)

Yes

Secretary publishes notice in Federal Register to announce the request.

Secretary notifies each member of the Endangered Species Committee, and:
451.02(h)

Secretary notifies Governor(s) of affected States and requests nominations of individuals to represent the State(s) on the Committee.
451.03(b)
January, 1988

Secretary completes a threshold review and determination within 20 days of receipt of application:
- Was a BA conducted?
- Has the applicant refrained from making an irreversible or irrevocable commitment of resources?
- Was consultation carried out in good faith and were recommendations fairly considered? 452.03(a)

No

Application is denied—This is a final agency action for purposes of judicial review. End 452.03(c)

Yes

Secretary notifies applicant that application will be considered by the Endangered Species Committee. 452.03(d)

Secretary prepares report for the Endangered Species Committee within 140 days of making the threshold determination. 452.04, 452.08

The Secretary, in consultation with the Committee, shall hold a hearing conducted by an Administrative Law Judge after notice is given in the Federal Register. 452.05

Written recommendations or nominations are received from Governor(s) within 10 days of notification. 451.03(b)

Secretary transmits nominations of Governor(s) to President of United States within 30 days of receipt of application, for selection of one person from each affected State. 451.03(b)

Endangered Species Committee named:
- Secretary of Agriculture
- Secretary of Army
- Secretary of Interior
- Chairman CEA
- Administrator EPA
- Administrator NOAA
- State(s) member 7(e) of ESA
Endangered Species Committee will grant an exemption within 30 days if 5 members (of 7) concur that:

- There are no reasonable and prudent alternatives.
- The benefits of the action clearly outweigh the benefits of the alternatives.
- Action is in the public interest.
- Action is of regional or national significance.
- No irretrievable or irreversible commitment of resources was made.
- Reasonable mitigation and enhancement measures will be carried out by applicant.

453.03(a)

Endangered Species Committee issues an Order granting or denying the exemption.

Judicial review may be sought by any person through the U.S. Court of Appeals by filing within 90 days of the date of the Order.

453.03(b); 7(n) of ESA

End