

US Army Corps of Engineers

Endangered Species Act

Section 7 Consultation

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Section 7 Consultation

- Consultation Handbook (1998)

http://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf

- ▶ Time Frames
- ▶ Biological Assessment
- ▶ Consultation – Informal/Formal
- ▶ Letter of Concurrence/Biological Opinion



Scope of Analysis for Endangered Species

- **Action Area**

- ▶ Work in waters of U.S.
- ▶ Uplands affected by work in water

- **Decision to Expand Action Area**

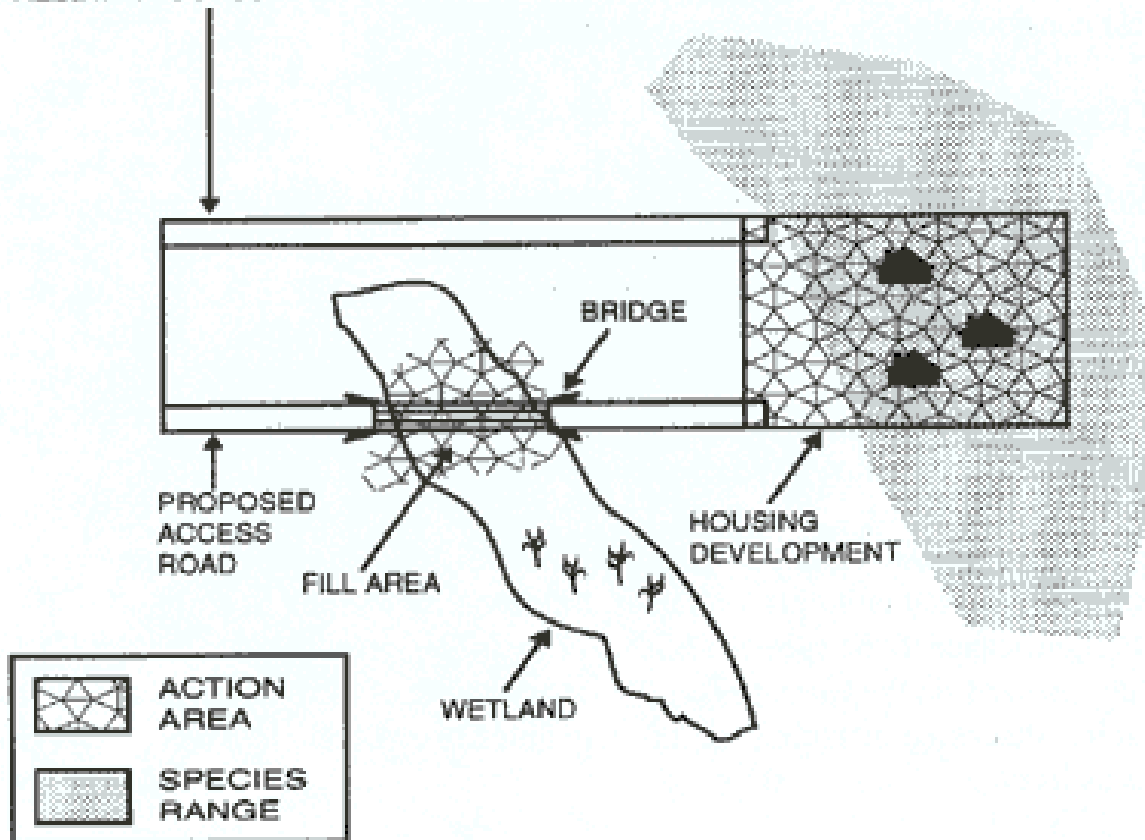
- i. Merely a link in a project corridor
- ii. Portions of work in uplands that directly affect the location and configuration of regulated activity
- iii. Extent of project within Corps jurisdiction
- iv. Cumulative Federal control and responsibility



1998 Endangered Species Consultation Handbook

Figure 4-6. Determining the action area.

ALTERNATIVE ACCESS NOT AFFECTING THE WETLAND, BUT NOT CONSIDERED IN THE PERMIT APPLICATION, IS NOT RELEVANT CONSULTATION ON THE PERMIT APPLICATION



- Action Area may be larger than impacts to waters

But wait, there's more...

- The ESA Handbook also emphasizes the 'but for' test
 - ▶ would activity occur without the action?
 - ▶ interrelated and/or interdependent
- *Agreed to Disagree*



Gathering Information Required for Consultation

- Answer the six questions
- Use Species Lists
 - ▶ Occurrence Information (CNDDDB)
- Do your Homework
 - ▶ Recovery Plans
 - ▶ Studies & Publications
- USFWS & NMFS Websites



[http://www.fws.gov/sacramento/es_species/Accounts/Home/
es_species.htm](http://www.fws.gov/sacramento/es_species/Accounts/Home/es_species.htm)

<http://www.nmfs.noaa.gov/pr/species5/fish/>



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The Six Questions

The following information is included to initiate consultation (from Consultation Handbook, Sec 4.2):

1. A description of the action to be considered
2. A description of the specific area that may be affected by the action
3. A description of any listed species or critical habitat that may be affected by the action
4. A description of the manner in which the action may affect any listed species or critical habitat and analysis of any cumulative impacts
5. Relevant reports including any environmental impact statement, environmental assessment, or biological assessment prepared
6. Any other relevant available information on the action, the listed species, or critical habitat



1. Description of Action

- Clearly define ALL elements of the action
- Include a summary of impacts to waters of the U.S.
- Include maps and plans as necessary
- Purpose and Use



2. Description of Effected Area

- Describe the action area and surrounding landscape
- Current site conditions
- What are the current and surrounding land uses?



3. Description of Listed Species and Critical Habitat

- Describe ALL listed species with the potential to occur on site
- How are they currently using the site
- If potential species aren't there, why?
- Describe PCE's for critical habitat that exist on site



4. Description of Effects to Listed Species and Critical Habitat

- Describe how the project would affect listed species
- Would the action result in a take?
- Include all proposed avoidance and mitigation measures
- Describe impacts to each PCE for critical habitat on site
- Does it affect the Recovery Plan?



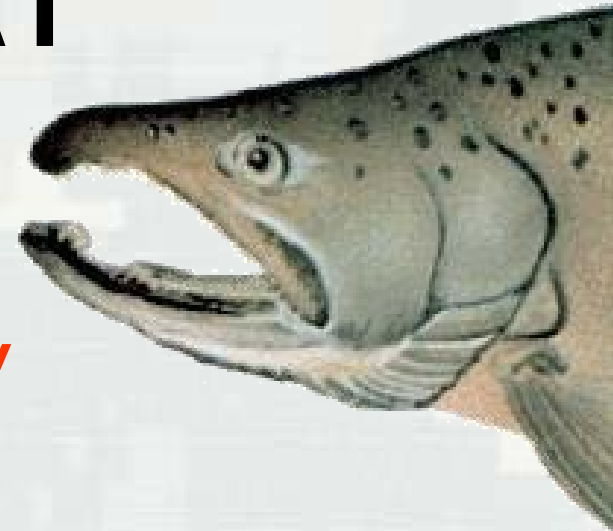
5. & 6. Relevant Reports and Studies

- Include the reference to relevant studies and environmental reports for the site or region
- Any additional information about the species, critical habitat, or proposed action



CRITICAL HABITAT

The final rule listing critical habitat describes the **primary constituent elements (PCEs)**



Consider and address effects to each element

Quantify:

- Condition of PCEs
- Changes in Distribution
- Changes in Productivity



Information for Biological Assessment

- On-site inspection data
- Review of species of concern
- Literature & information review
- Analysis of effects on species & habitat
- Alternatives considered
- Avoidance and Mitigation Measures (aka BMPs)



Effects to analyze

Effects of the Proposed Action and Interrelated and Interdependent Actions

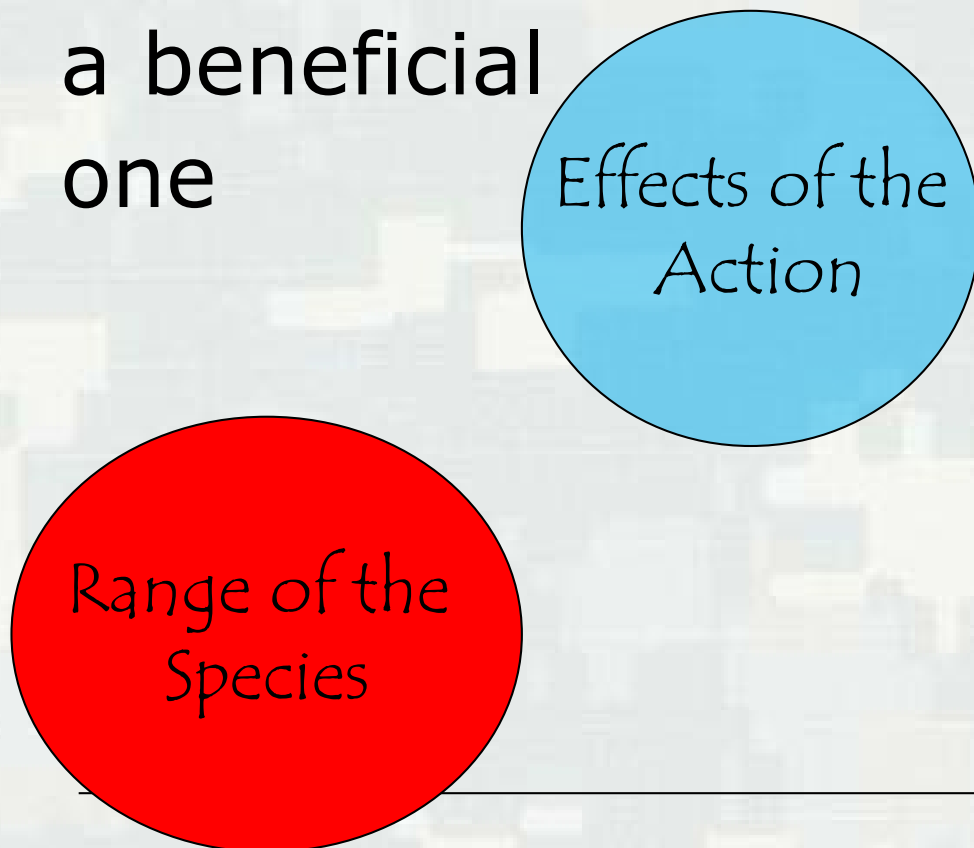
- Direct
- Indirect
- Beneficial



No Effect

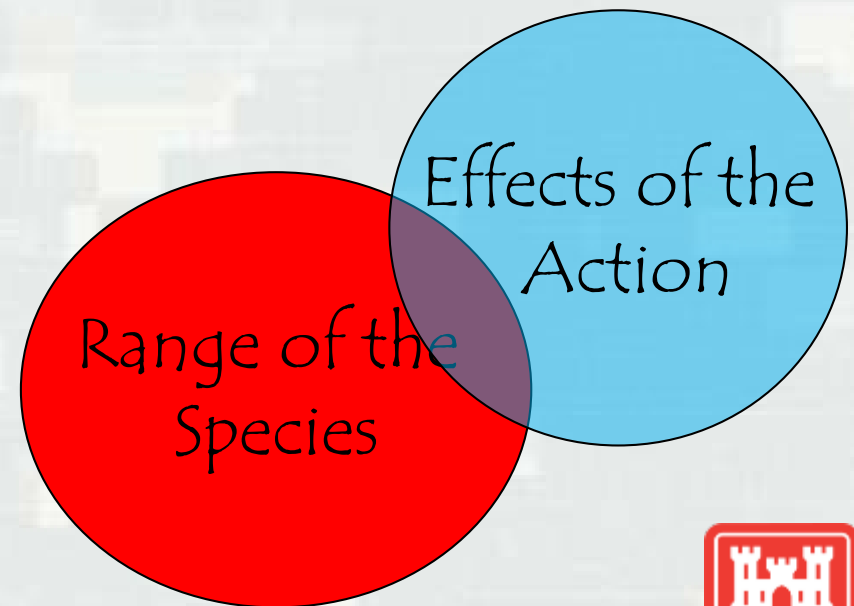
NO Effect

Not even
a beneficial
one



May Affect

Exposed to a stressor
generated or caused by
the action or interrelated
or interdependent actions



May Affect, Not Likely to Adversely Affect

The appropriate conclusion when the responses by a species or its critical habitat are likely to be:

- ❖ Discountable
- ❖ Wholly beneficial
- ❖ Insignificant (does not involve take)
 - No “mitigated NLAAs”

Informal Consultation
is required



May Affect, Likely to Adversely Affect

The stressors generated or caused by the action, or its interrelated and interdependent actions, are likely to **directly or indirectly have any adverse affect** to a listed species or its critical habitat.

Formal Consultation
is required



Informal Consultation

Process

- ▶ Initiated by Federal agency or designated non-Federal representative
- ▶ Service may suggest modifications to avoid adverse effect
- ▶ Ends with Letter of Concurrence
- ▶ **No Take Authorization**



Formal Consultation

Process

- ▶ Written request to Service with best scientific & commercial data available
- ▶ Incidental Take Statement



Standard Special Condition

- “contains **mandatory** terms and conditions to implement the reasonable and prudent measures”
- “authorization...is **conditional** upon your compliance with all of the mandatory terms and conditions”
- “terms and conditions are **incorporated by reference**...Failure to comply...where a take of the listed species occurs, would constitute an **unauthorized take**, and it would also constitute **non-compliance with your Corps permit.**”



Questions?



*Help me,
Manatees*

Contact Information



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<http://www.spk.usace.army.mil/Missions/Regulatory.aspx>

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