



# ESA INFORMATION GUIDELINES FOR THE REGULATORY PROGRAM

**U.S. ARMY CORPS OF ENGINEERS**

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Section 7(a)(2) of the Endangered Species Act (ESA) requires Federal agencies, in consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service (Services), to ensure that actions authorized, funded, or carried out by that agency are not likely to jeopardize the continued existence of any Federally-listed endangered or threatened species. Therefore, before any activity can be authorized by the U.S. Army Corps of Engineers, Sacramento District Regulatory Division (Corps) under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act, we must ensure that the project is in compliance with the ESA. The Sacramento District has developed this guidance in coordination with the Services to improve the quality of the ESA information the District submits to the Services when initiating consultation under the federal Endangered Species Act.

Guidance on the information needed to complete both informal and formal consultation for effects to Federally-listed threatened and endangered species pursuant to 50 CFR 402.14(c) are outlined in detail below. This document is intended to re-organize, expand upon, and replace the Sacramento District Biological Assessment Checklist that was previously available on the District webpage. Revisions are based upon lessons learned from previous consultations and feedback received from the Services. These guidelines have been developed in an effort to streamline Endangered Species Act consultations between the Regulatory Division and the Services and is intended for public use to ensure sufficient information is provided in pre-construction notifications and to assist project managers in evaluating the information provided by applicants in pre-construction notifications. These guidelines will be evaluated periodically to determine if revisions are necessary.

Pursuant to 50 CFR 402.14(c) and coordination with the Services, a written request to initiate informal or formal consultation should include the following: (1) a description of the action to be considered; (2) a description and map 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 an analysis of any cumulative effects and a recommended determination of effect for each species and critical habitat; (5) relevant reports, including any environmental impact statement, environmental assessment, or biological assessment prepared; and (6) any other relevant available information on the action, the affected listed species, or critical habitat.

The recommended information is listed below in order to ensure the consultation process is as streamlined as possible. We recommend you submit a hardcopy and an electronic copy of the information, including a copy of any references used.

I. **Table of Contents:** This section should include a listing of each section and the page location of the beginning of that section

II. **Introduction/Executive Summary:** This section should give a brief summary of the project, the project location, purpose and need of the project, purpose of the document, a list of species and/or critical habitat that may be affected by the project, and recommended effect determination for each species and/or critical habitat discussed in the document. A species list can be completed using the U.S. Fish and Wildlife Service IPAC website <https://ecos.fws.gov/ecp0/reports/ad-hoc-species-report-input>

III. **Consultation History:** Should include a detailed description of any discussion, coordination, or consultation prior to the development of the report. (Do not include this section if there has been no prior coordination) If past history exists for a project, make sure to include the earlier identification numbers from the various agencies associated with the project.

IV. **Description of the Proposed Action:** A complete and detailed project description, including avoidance, minimization, and compensation measures. Specifically:

If the scope of the Corps' action is a part of a larger overall project (i.e. if the Corps scope of analysis is the permitted impacts and the Corps permitted activities are a part of a larger project), the Corps Action Area should be clearly identified in relation to the overall project boundaries and effects. If you have questions regarding the extent of the Action Area, it is recommended that you contact the Corps for additional discussion.

Schedule specifics - time of year, number of seasons, continuous or intermittent, night work proposed;

Proposed on-site or off-site conservation measures that would be used to avoid and minimize any impacts to Federally-listed species and their critical habitat;

Any other measures that would be used to avoid and minimize impacts to Federally-listed species (e.g., seasonal work windows);

Any proposed off-site conservation or mitigation proposed to offset unavoidable impacts to species and critical habitat;

Any associated infrastructure construction or improvements that may be necessitated by the project;

Include restoration plans for any applicable temporary disturbance, including any temporary/short-term effects to Federally-listed species resulting from the project (including site security, mechanical maintenance activities, use of pesticides, etc.);

- Describe any water diversions/dewatering methods, including:
  - Description of diversion controls and de-water actions, including quantity of water, location, timing, and duration;
  - If a cofferdam(s) is/are proposed, include the dates they will be in place (years, months, or days) and the area they will occupy;
  - Complete description of the total area to be dewatered, including habitat type and acreage;
  - Measures to keep fish/wildlife out of dewatering devices to prevent entrapment, if applicable;
  - Discussions of impacts to water quality, both temporary and/or permanent, if applicable;
  - Description of any water depletions if the work is proposed in a basin where water depletions are considered an adverse effect to listed fish species (e.g., Colorado River Basin);
    - A description of the specific area that may be affected by the action, including:
      - Map of area to be affected showing proposed work/impacts;
      - Location of and description of any work proposed for staging areas, storage areas, and access routes;
    - Identify any borrow and/or material disposal sites;
    - Identify the acreage of temporary and/or permanent disturbance of waters of the U.S.;
    - Describe where activity or equipment use will occur in relation to the Ordinary High Water Mark;
    - Types of equipment used, and for what type of water impact activity (e.g. type of dredger, piles/pile drivers); and
    - For pile driving activities, a detailed description, including number of piles, size/material of piles, type of hammer (vibratory or impact), number of piles driven per day, whether the piles would be driven into dry land or in-water, sound level data to support an effect determination based on the most recent agency guidance.

#### V. **Environmental Baseline:**

- Briefly describe the Environmental Baseline of the project. Identify where the baseline information came from and the date the information was created; and

VI. **Effects of the Action:** This section should discuss the direct, indirect, and cumulative effects of the action and any interrelated or interdependent activities on each Federally-listed species and Critical Habitat and effects to any species proposed for listing or proposed Critical Habitat. Effects to individuals and to critical habitat should be considered separately. For critical habitat, affects to each physical or biological features (PBF, for NMFS-listed species) or Primary Constituent Elements (PCEs) of the Critical Habitat should be addressed, including a clear statement of any PBFs or PCEs that would not be affected.

A description of the manner in which the action may affect any Federally-listed species or critical habitat and an analysis of any cumulative effects. For species with different types of habitat (e.g., aquatic and upland, seasonally), include a description for each type of habitat. Include the specific life stages affected by the action.

Discussion of direct, indirect, and cumulative effects. Include effects from interrelated and interdependent actions.

Definition: <http://www.fws.gov/endangered/esa-library/pdf/toc-glos.pdf>

Examples: <http://www.fws.gov/endangered/esa-library/pdf/CH4.PDF>

Full survey results which support (in addition to any additional information) the effects determination, including data sheets and protocols/guidelines used. Include a description of the survey conducted and a justification for the survey protocol.

Temporary (lasting less than one year) and permanent (Lasting more than one year) effect(s) associated with the proposed action. Identify how long the temporary effect(s) would last before the area is restored.

The analysis of effects should consider common stressors including, but not limited to sound pressure, noise levels, light (both during the day and at night), relocation, loss of habitat, depletion of flows/water, turbidity, erosion, sedimentation, displacement of individuals as a result of exclusion, relocation of species prior to project implementation, additional future work as a result of the project, toxins/contaminates introduced or resuspended in the water as a result of the project; and other direct or indirect effects.

The analysis of effects should consider long term habitat accountability effects such as those resulting from increased human use of the area, maintenance activities, and other post-construction activities that may affect habitat suitability.

For pile driving activities, a detailed sound analysis or the relevant data necessary for a sound analysis based on the most recent agency guidance.

If the proposed project is located in an area deemed Essential Fish Habitat (EFH) by the Pacific Fishery Management Council, and would result in an adverse effect to EFH, an EFH assessment identifying the effects of the proposed project to EFH should be included. Examples of EFH assessments can be found at:

[http://www.westcoast.fisheries.noaa.gov/habitat/fish\\_habitat/efh\\_consultations\\_go.html](http://www.westcoast.fisheries.noaa.gov/habitat/fish_habitat/efh_consultations_go.html)

If the proposed project is location in an area deemed as EFH and the project would not result in an adverse effect, the report should include information to support a determination of no adverse effect.

Briefly describe the Cumulative effects of the project.

VII. **Other Relevant Information:** This section should include any additional information used to determine effects for each species and/or critical habitat.

Any other pertinent written materials submitted with the permit application. All figures should be labeled clearly and dated.

Relevant reports, including any environmental impact report, environmental assessment, biological assessment and/or environmental impact statement.

Any other relevant available information on the action, the affected listed species, or critical habitat.

VIII. **Conclusion:** This section should include a brief summary of the effects recommendation.

State whether or not the lead Federal agency wishes to have the project appended to a programmatic biological opinion (BO), if applicable. Confirm that the project meets the requirements of the programmatic BO.

The analysis should support the conclusion(s). Summarize key points that link the analysis to your conclusions.