

Introduction

This template is intended as a guide for preparing a biological assessment (BA) for a Corps Section 408 permitting action. The text in **black** is standard language that should be included in the final product. The text in **red** should be replaced with project specific information. The text in **purple** is explanatory text and should be removed from the final product.

The following websites provide useful information for Section 7 consultations:

- USFWS Consultation Handbook: https://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf
- USFWS's Endangered Species Compensatory Mitigation Policy: https://www.fws.gov/endangered/improving_esa/cmp.html
- USFWS's Information for Planning and Consultation (IPaC): <https://ecos.fws.gov/ipac/>
- USFWS's Environmental Conservation Online System (ECOS): <https://ecos.fws.gov/ecp/>
- NMFS California Species List Tools: http://www.westcoast.fisheries.noaa.gov/maps_data/california_species_list_tools.html
- CDFW's California Natural Diversity Database: <https://www.wildlife.ca.gov/Data/CNDDDB/Maps-and-Data>
- NOAA Fisheries' critical habitat data: <http://www.nmfs.noaa.gov/pr/species/criticalhabitat.htm>
- NMFS Recovery Plan for Central Valley Salmonids: http://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/recovery_planning_and_implementation/california_central_valley/california_central_valley_recovery_plan_documents.html
- NOAA Fisheries' essential fish habitat information: http://www.westcoast.fisheries.noaa.gov/habitat/fish_habitat/efh_consultations_g_o.html

If you have any questions concerning your project, Section 7 consultation, or the BA template please contact Mr. Brian Luke, Natural Resource Specialist, at (916) 557-6629, Brian.J.Luke@usace.army.mil or Ms. Kaleigh Maze, Biologist, at (916) 557-6732, Kaleigh.Maze@usace.army.mil

**Template Biological Assessment
and
Essential Fish Habitat Assessment**

[Only include this if there is designated essential fish habitat in the action area.]

**for the
[Project Name] (ID No. [XXXXX])**

Prepared for:
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1. INTRODUCTION:

The purpose of this biological assessment (BA) is to review the proposed [Project Name] in sufficient detail to determine to what extent the proposed action may affect any of the threatened, endangered, or proposed species and designated or proposed critical habitats listed below. In addition, the following information is provided to comply with statutory requirements to use the best scientific and commercial information available when assessing the risks posed to listed and/or proposed species and designated and/or proposed critical habitat by proposed federal actions. This BA is prepared in accordance with legal requirements set forth under regulations implementing Section 7 of the Endangered Species Act (50 CFR 402; 16 U.S.C. 1536 (c)). This BA addresses species that fall under the jurisdiction of [the U.S. Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS)].

Pursuant to Section 14 of the Rivers and Harbors Act of 1899, 33 U.S.C. 408 (Section 408), [requester(s) name(s)] (Requester) have/has requested permission through the [non-federal sponsor name] (non-federal sponsor of the federally authorized project) from the US Army Corps of Engineers (Corps) to alter the [name of Federal project, for example, Sacramento River Flood Control Project], an existing federal [flood risk management, navigation, dam, reservoir, or non-federal hydropower] project, authorized by the [citation to original authorizing statute, for example, Flood Control Act of 1917] [Contact the Corps if this information isn't readily available]. [The requester is also seeking Department of the Army authorization under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act for the discharge of dredged or fill material associated with the construction of the proposed project.] [This language should only be included if a Section 404 and/or Section 10 permit is needed.]

The following federally listed species will be considered in this BA.

- [common name, (scientific name), federal listing status (i.e. threatened)]
- [common name, (scientific name), federal listing status (i.e. threatened)]
- [common name, (scientific name), federal listing status (i.e. threatened)]
- Etc.

The action addressed within this document falls within designated [and/or proposed] critical habitat for [species names]. [Or, if there is no designated critical habitat in the project area, state that here.]

2. CONSULTATION TO DATE

[In this section, summarize any consultation that has occurred thus far. For example, prior to initiating formal consultation or requesting concurrence, agencies and applicants may engage in a period of technical assistance to discuss the project and develop avoidance, minimization, and conservation measures. Identify when consultation was requested (if not concurrent with the BA). Be sure to summarize meetings, site visits and correspondence that were important to the decision-making process.]

3. DESCRIPTION OF THE PROPOSED ACTION

3.1 LOCATION:

The proposed project is located [general location information, including county and state] (Figure X). The proposed project is located [specific location information, such as the waterbody (i.e. Sacramento River), if it is waterside of a levee, etc.], approximately latitude: [XX.XXXXX] °, longitude [-XXX.XXXXX] °. [Please include appropriate maps, including a vicinity map.]

3.2 ACTION AREA:

[The action area is defined as “all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.” The purpose of identifying this area is to provide a boundary around the area(s) in which the effects of the action will be felt. The action area is defined by measurable or detectable changes in land, air and water, or other measurable factors that result from the proposed action and interrelated or interdependent actions. In this document, we call these measurable or detectable changes stressors (or subsidies in the case of changes you may consider beneficial to species and critical habitats).

To determine the action area, we recommend that you first deconstruct the action down into its components (e.g., vegetation clearing, construction of cofferdams, staging areas, borrow areas, access roads, etc.). Determine the stressors that are expected to result from each component. For example, instream actions may mobilize sediments that travel downstream as increased turbidity and then settle out as sediments on the stream substrate. Sound levels from machinery may be detectable hundreds or thousands of feet away. Use these distances when delineating the extent of your action area.

Finally, describe the action area, including features and habitat types. Include photographs (either in-text as figures or as an appendix) and an area map as well as a vicinity map. The vicinity map for terrestrial projects should be at a 1:24,000 scale with the USGS quad name included. These maps can be used as the maps required for the location section as well.]

3.3 PROJECT DESCRIPTION: [This project description should match the project description of the 408 permission request.]

[The purpose of this section is to provide a clear and concise description of the proposed activity and any *interrelated* actions (actions that are part of a larger action and depend on the larger action for their justification) or *interdependent* actions (actions that have no independent utility apart from the action under consideration).

In other words, describe and specify: **WHO** is going to do the action and under what authority, include the name and office of the action agency and the name of the requester;

WHAT the project or action is; **WHERE** the project is (refer to attached maps); **WHEN** the action is going to take place, including time line and implementation schedules; **HOW** the action will be accomplished, including the various activities that comprise the whole action, the methods, and the types of equipment used; **WHY** the action is proposed, including its purpose and need; and **WHAT OTHER** interrelated and interdependent actions are known.

It can be useful to deconstruct the action (or actions) into smaller pieces. For example, building a new house may be the main action, but this can be deconstructed into a number of smaller pieces that may have different effects on listed species: drilling a well, trenching an electric line, digging a foundation, paving a new driveway, actually constructing the house itself, etc. Describe how each individual piece of the action will be carried out.

Include maps that show location(s) of construction, as well as access routes and staging areas.

Any relevant plans should be included as an appendix.

Some examples of commonly overlooked items that need to be included in the project description are (in no particular order):

- Construction schedule, including what month(s) and year(s) the project will take place, as well as the daily start and end times/work hours (specify if there will be night work or not).
- List of equipment to be used.
- Construction access routes.
- Staging areas.
- Construction methods/techniques.
- Whether the project is part of a larger project or plan.
- Permanent versus temporary impacts, and the duration of temporary impacts.
- Area of ground disturbance activities.
- Depths of excavation.
- In-water work (type of activities to be done in-water i.e. pile driving, structures, fill material etc.)]
- Proposed in-water work - month/day to month/day.
- Pile driving (number of piles, size/material of the piles, type of hammer (vibratory or impact), number of piles driven each day, and whether the piles are being hammered into dry ground or water).

3.4 CONSERVATION MEASURES:

[Include a clear list and description of all best management practices (BMPs), conservation measures and project mitigation such as avoidance measures, seasonal restrictions, compensation, restoration/creation (on-site and in-kind, off-site and in-kind), and use of mitigation or conservation banks. If mitigation credits are being proposed please state how many credits are being purchased and how the number was

calculated. Please include a description of any dust, erosion, and sedimentation controls here.]

4. STATUS OF THE SPECIES AND CRITICAL HABITAT IN THE ACTION AREA

[Provide a current list for USFWS species from the IPaC and append to the BA. The NMFS species can be identified using the California Species List Tools on their website.]

[Describe how the list of all federally listed species and critical habitat with the potential to occur in the action area was compiled (i.e. searches of CNDDDB, IPaC, conversations with the Services, etc.). Include dates of database searches, how searches were conducted (i.e. what areas were searched), etc.

Only include federally listed/ proposed species, it is unnecessary to include state listed species.]

Table [X]. Federally listed species potentially occurring [Every species on the IPaC list and NMFS list should be in the table] within the action area of [project name].

Scientific Name; Common Name	Federal Listing Status	Critical Habitat Status	Habitat Description	Determination of Effects
Amphibians [Example]				
<i>Ambystoma californiense</i> ; California tiger salamander	Threatened	Final designated August 23, 2005. None within action area.	California tiger salamanders require large tracts of upland habitat, with abundant underground refugia (particularly small mammal burrows), near suitable breeding ponds (generally vernal pools or wetlands). Tiger salamanders are known to migrate up to 1.3 miles to and from breeding ponds and upland habitat.	No suitable upland or aquatic habitat exists within the action area. No effects.
<i>Rana draytonii</i> ;	Threatened	Final designated March 17,	Adult California red-legged frogs are able to use a variety of aquatic,	California red-legged frogs are not

California red-legged frog		2010. None within action area.	riparian, and upland habitat types provided a permanent, preferably slow moving, water source is nearby.	associated with the Sacramento River. No suitable habitat is present within the action area. No effects.
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Fish [Example]

<i>Acipenser medirostris</i> ; southern DPS of North American green sturgeon	Threatened	Final designated October 9, 2009. Critical habitat within action area.	Adult green sturgeon are known to spawn in the upper mainstem of the Sacramento River. Subadult and adult green sturgeon spend the majority of their life in the coastal marine environment.	Suitable habitat for green sturgeon is present within the action area. May affect, likely to adversely affect.
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4.1. *[SPECIES NAME]* [Only address the species that will be affected by the project]

[Provide information on affected individuals and populations, such as presence, numbers, life history, etc. For some large or complex actions, it may also help to identify any ongoing threats, limiting factors to species viability or habitat value, and implementation of any recovery actions that occur in the action area. If the species has a recovery plan, that document will contain additional information on species status threats, and actions needed to recover the species. Include a brief description of critical habitat for each species.

Include aspects of the species' biology that relate to the impact of the action, such as sensitivity to or tolerance of: noise, light, heat, cold, inundation, smoke, sediments, dust, etc. For example, if the species is sensitive to loud sounds or vibration, and your project involves loud tools or equipment, reference that aspect of their biology. Include in-text citations for all sources of information. If a species is limited to a narrow thermal range and a narrow humidity range, show where in the action area the temperatures are sufficient to support the species, where the humidity is sufficient to support the species, and where those areas overlap.

Describe habitat use in terms of breeding (spawning), feeding, and sheltering. Also discuss habitat use patterns, including seasonal use and migration (if relevant), and identify habitat needs. If information is available, include a discussion of population dynamics as the size of a population and its natural variance over time are important characteristics affecting the species' response to disturbance factors. Include information on the status and distribution of listed species and designated critical habitat.

Keep this section relevant. It is unnecessary to discuss biology that is unrelated to project impacts (e.g., discussion of pelage color, teat number, and number of digits fore and aft when the project is a new boat dock).

Utilize the best scientific and commercial information available and state in the BA that you have done so. Use and cite publications/journal articles/agency data and technical reports.]

4.2. *[SPECIES NAME]*

[Repeat for each species that may be affected by the proposed action. Do not include a species description for species that have a “no effects” determination. Be careful not to discuss effects in this section, the primary purpose of this section is to summarize relevant local information on the biological requirements of the species, population viability (trends, abundance, distribution, etc.), and condition of critical habitat.]

4.3. *[ETC.]*

[Repeat.]

5. ENVIRONMENTAL BASELINE AND CUMULATIVE EFFECTS

[This section provides information which is then used along with the species and critical habitat information from the preceding section to describe the pre-action condition of the species and critical habitat that will be exposed to the stressors and subsidies of the action(s) under consultation. The purpose of this section is to provide a summary of the relevant local information on the impacts that other factors (human and natural) in the action area have had on the viability of the species and value of critical habitat. These other factors may have occurred in the past, may continue to affect the species and habitat today, or will affect the species and habitat in the future.]

5.1. ENVIRONMENTAL BASELINE:

[Describe the status of the listed species individuals in the action area: where are the individuals, how are they using the action area (spawning, foraging, nesting, migratory corridor), etc. Provide the results of any surveys that occurred. For all survey reports clearly identify how the survey was done, when, where, and by whom. If survey protocols were followed, reference the name and date of the protocol. If survey protocols were modified, provide an explanation of how the surveying occurred and the reasoning for modifying the protocol. If a previous survey report is referenced, ensure that it is publicly available or include it as an appendix.

Describe factors affecting the species and critical habitat (if present) in the action area. Specifically, describe any past or present human activities within the action area and the positive or negative impacts those activities have had on the species or habitat in the area in terms of abundance, reproduction, distribution, diversity, and habitat quality or function. Include the impacts of past and present federal actions as well as state, tribal, local, and private actions. For continuing actions, describe the impacts of past existence and operation of the action under consultation. Describe the physical and biological features (PBFs) of designated and/or proposed critical habitat in the action area. If there is critical habitat for more than one species present in the action area, then be sure to include a description for each critical habitat. Keep in mind, primary constituent elements (PCEs) are now called PBFs. Discuss the conservation role of the critical habitat and if possible, identify why the specific unit of critical habitat in the action area was designated/what it was designated for (e.g. designated for recovery, designated because this area is the only known nesting site, etc.)

Relevant information such as habitat conditions at the site, habitat conditions between work areas and listed species locations, surrounding land-uses, hydrology and drainage patterns, and prevailing winds and expected seasonal shifts can all be presented to provide support for your analysis of the effects of the action and your conclusions.]

5.2. CUMULATIVE EFFECTS:

[Discuss the effects of future State, Tribal, local or private actions that are reasonably certain to occur in the action area. Future Federal actions that are unrelated (*i.e.*, not interrelated or interdependent) to the proposed action are not considered in this analysis

because they will be subject to separate consultation pursuant to section 7 of the Act. (Note: Cumulative effects under ESA are **not** the same as the definition under NEPA. Be careful not to mix them up.) Describe the impacts of these cumulative effects in terms of abundance, reproduction, distribution, diversity, and habitat quality or function.

Present all known and relative effects to population, e.g., fish stocking, fishing, hunting, other recreation, illegal collecting, private wells, development, grazing, local trust programs, etc.

Include impacts to the listed and proposed species in the area that you know are occurring and that are unrelated to your action--e.g., road kills from off-road vehicle use, poaching, trespass, etc.

Do not discuss past actions in this section. Past actions should be included in the Environmental Baseline section. Also, do not discuss actions that are not reasonably certain to occur. If there are no state, tribal, local, or private actions that are reasonably certain to occur in the action area, then just include a statement to that effect.]

6. EFFECTS OF THE ACTION

6.1. EFFECTS OF THE ACTION ON [SPECIES NAME(S)] AND CRITICAL HABITAT [if applicable]

[The purpose of this section is to document your analysis of the potential impacts the proposed action will have on species and/or critical habitats. Construct an analysis that clearly shows how an action affects the specific individuals of a species in the action area and the PBFs of any critical habitat in the action area. This analysis has two possible conclusions for listed species and designated critical habitat:

1. **May Affect, Not Likely to Adversely Affect** – the appropriate conclusion when effects on a listed species or critical habitat are expected to be *discountable*, *insignificant*, or completely *beneficial*.
 - a. **Beneficial effects** – contemporaneous positive effects without ANY adverse effects
 - b. **Insignificant effects** – relate to the size of the impact and should never reach the scale where take would occur. Explicitly explain why the effect is considered insignificant.
 - c. **Discountable effects** – those that are extremely unlikely to occur. Based on best judgment, a person would not: (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur.
2. **May Affect, Likely to Adversely Affect** – the appropriate finding if *any* adverse effect may occur to listed species or critical habitat as a direct or indirect result of the proposed action or its interrelated or interdependent actions, and the effect is not discountable, insignificant, or beneficial

In the case of proposed species or proposed critical habitat, the possible conclusions are:

1. Proposed Species: **Likely to Jeopardize the Continued Existence or Not Likely to Jeopardize the Continued Existence**
2. Proposed Critical Habitat: **Likely to Destroy or Adversely Modify or Not Likely to Destroy or Adversely Modify**

The effects analysis includes assessment of:

- Direct and indirect effects (including stressors and subsidies) of the action(s) under consultation, including conservation and minimization measures.
- Direct and indirect effects (including stressors and benefits) of interrelated or interdependent actions if they are present.

Under the ESA, direct effects are those that are caused by the action(s) and occur at the time of the action(s), and indirect effects are those that are caused by the action(s) and are later in time, but are still reasonably certain to occur. For an ongoing action, such as operation of a tidal gate, the distinction between direct and indirect effects may be difficult to finely distinguish. What is critical is that the scope of the analysis consider stressors and subsidies that occur beyond when (and where) an action initially occurs.

Effects are measured as a function of a species exposure to a stressor and the response of the species to that stressor. When identifying and discussing effects, it is important to identify the following information:

- What might be exposed (PBFs, individuals of the listed species, individuals upon which the listed species depends [host plant, prey species, etc.], habitat resources upon which the listed species depends);
- How many individuals/populations (and at what life stages) would be exposed;
- The specific stressors associated with each exposure;
- The intensity and frequency of the exposure;
- Whether the exposure (stressor) is direct, indirect, or both; and
- Where, when, how long, and how often exposure would occur.

Remember that exposure to a stressor is not always direct. For example, in some cases individuals of a species may be directly exposed to the sediment mobilized during construction. However, in other cases, individuals of the species would be exposed indirectly when sediment mobilized during construction settles out in downstream areas, rendering those areas unusable for future spawning or foraging.

Once you have examined the details of the exposure of species or critical habitat to an action, the next step is to determine the potential response or range of responses the exposed individuals or components of critical habitat will have to those levels and types of exposure.

Be sure to describe the expected responses clearly and focus your analysis towards determining if any of the possible responses will result in the death or injury of individuals, reduced reproductive success or capacity, or the temporary or permanent blockage or destruction of biologically significant habitats (e.g., foraging, spawning, or lekking grounds; migratory corridors, etc.). Any of these above responses are likely to

qualify as adverse effects. If the available information indicates that no observable response is expected from the levels and types of exposure, the action may be unlikely to adversely affect a species or critical habitat.

However, remember that no observable response may actually mask an invisible internal response such as increased stress hormone levels, elevated heart rate, etc. Depending on the fitness of the exposed individual and the surrounding environment (including other threats), these “invisible” responses may lead to more serious consequences.

For critical habitat, identify the extent to which the PBFs are present in the action area and determine how the action will affect each PBF, both short-term and long-term. Explain how these effects are likely to influence the function and conservation role of critical habitat.

In the effects section it is best to avoid using legal terms such as “take”. Instead, use terms such as “kill”, “injure”, or “capture”. Instead of using terms such as “harm” or “harassment”, discuss “loss of habitat” and “disturbance”. Avoid vague terms such as “minor” and “minimal”, these terms don’t really mean much. Describe as quantitatively as possible what the effects are. Good quantitative example: “0.25 acres of giant garter snake basking habitat will be permanently destroyed by construction and 1 acre of basking habitat will be temporarily disturbed by equipment staging.”

Understand and avoid common flaws in developing an effect determination. These common flaws are: the “Displacement” Approach (i.e., the species will move out of the way; there are plenty of places for them to go); the “Not Known to Occur Here” Approach (i.e., looking at survey results, or lack of results to determine presence in spite of other information or conditions that predict the species would occur on site); the “We’ll Tell You Later” Approach (i.e., if we find any, then we’ll let you know and that is when we will consult); or the “Leap of Faith” Approach (i.e., the agency wants the USFWS or NOAA Fisheries Service to accept a determination based on trust, rather than the best scientific and commercially available information.). In all of these cases, projects have been stalled or delayed when consultation has to be initiated just prior to project initiation or during project work.

Be sure that you have connected the dots between the various parts of the proposed action and the effects that you have identified. All of the effects should be able to be connected back to a specific part of the action.

The effects analysis should take into account any conservation measures that have been proposed. For example, if turbidity is a stressor, (1) include some general science on how the listed species reacts to turbidity; (2) describe how turbidity will be generated by the proposed project; (3) describe the project-specific conservation measures that prevent or minimize turbidity; and then, (4) describe the exposure/final response of individuals and the end effects once numbers 1-3 have been taken into account.

Do not include an effects analysis for species that you made a “no effects” determination for. These species are addressed in the table included in the Status of the Species section.]

6.2. EFFECTS OF THE ACTION ON [SPECIES NAME(S)] AND CRITICAL HABITAT [If applicable]

[Effects analysis for different species can either be grouped into one section if effects are similar, or split into different sections if effects are different. For example, effects to Chinook salmon and steelhead may be grouped into one section while effects to valley elderberry longhorn beetle may be placed in a second section.]

6.3. INTERRELATED AND INTERDEPENDENT EFFECTS

[Discuss interrelated and interdependent effects, if there are any, in this section. If there are none, then state that here.]

7. ESSENTIAL FISH HABITAT ASSESSMENT [Only include this section if there is EFH in the action area.]

7.1. ESSENTIAL FISH HABITAT BACKGROUND

The Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), requires Federal agencies to consult with NMFS on activities that may adversely affect Essential Fish Habitat (EFH).

The objective of this EFH assessment is to determine whether or not the proposed action(s) “may adversely affect” designated EFH for relevant commercially, federally-managed fisheries species within the proposed action area. It also describes conservation measures proposed to avoid, minimize, or otherwise offset potential adverse effects to designated EFH resulting from the proposed action.

7.2. DESCRIPTION OF THE PROJECT

[Provide a brief description (a couple of sentences) of the project and reference the project description in Section 3.2. of the BA. List the species that have designated EFH in the action area (i.e. Pacific Salmon, specifically Chinook salmon). Also list all of the life-history stages (eggs, larvae, young juvenile, juvenile, adult, and spawning) and state whether they are expected to be found in the action area. State whether there are any habitat areas of particular concern (HAPC) in the action area. If so, please describe them.]

7.3. ASSESSMENT OF EFFECTS

[Discuss the project's effects on EFH. It is acceptable to reference effects previously discussed in the BA; however, it should be made clear how they could potentially affect EFH.]

7.4. EFH CONSERVATION MEASURES

The conservation measures previously described in **Section 3.3** of this BA will be implemented to minimize the potential adverse effects to designated EFH described above. [Please list any additional conservation measures here, if there are some that have not been described above.]

8. CONCLUSION

[This is where you put your overall effects determinations after you have analyzed the exposure and response of species and habitat to the stressors resulting from the proposed action and interrelated or interdependent actions. Effect determinations must be based on a sound reasoning from exposure to response and must be consistent with types of actions in the project description, the biology in the species accounts, the habitat status and condition, changes to the existing environment, and the best scientific and commercial information available.

Include the basis for the conclusion, such as discussion of any specific measures or features of the project that support the conclusion and discussion of species expected response, status, biology, or baseline conditions that also support conclusion. Keep in mind that it is the Corps consulting and thus making the final effects determinations.

Include a determination for EFH, this should be a clear conclusion (for example: "Based upon the project design, the minimal short-term impacts associated with the dredging, and the extensive mitigation, the Corps believes there will not be any adverse effects to EFH"). Be sure to describe the reasoning behind the conclusion. Keep in mind that the determinations for EFH are either "adverse effects" or "no adverse effects".

If you make a "No effect" determination for another species or critical habitat, it should not need to be included here.]

9. LITERATURE CITED

[Provide a list of the documents that were cited in the BA, as well as any other documents that have bearing on the project.]

10. LIST OF CONTRIBUTORS

[List all the contributors to the BA, include contact information and titles (resumes are not necessary).]

11. APPENDICES

[Include any other relevant information as appendices. Some examples of information commonly included as appendices are IPaC list, photographs, survey results, project plans, restoration plans, fish rescue plans, monitoring plans, etc.]