

Overview of Habitat Conservation Planning vs. Section 7 Consultation for Federal Activities Affecting Threatened or Endangered Species

<i>ELEMENT</i>	<i>Section 10(a)(1)(A) HABITAT CONSERVATION PLANNING</i>	<i>SECTION 7 FORMAL CONSULTATION</i>
<i>Purpose</i>	To permit otherwise prohibited take when that take is incidental to an otherwise lawful activity	To insure federal actions are not likely to jeopardize the continued existence of listed species or destroy or adversely modify critical habitat.
<i>Applicant's Role/Responsibilities</i>	Submit application for Incidental Take Permit (ITP) to U.S. Fish and Wildlife Service or National Marine Fisheries Service (Services). Permit must contain: <ul style="list-style-type: none"> • Permit Application Form • Fee (USFWS only) • Habitat Conservation Plan (HCP) developed with technical assistance from the Services. The HCP must: 1) Identify project impacts to listed species; 2) Determine anticipated take levels and types of takes; 3) Identify effects of takes on the species; 4) Address effects to Critical Habitat; 5) Identify ways to monitor, minimize and mitigate impacts; 6) Identify alternative actions considered and reasons why not used; 7) Specify funding to implement proposed mitigation and monitoring. • Implementation Agreement (Optional) 	Federal action agency requests consultation under Section 7 of the Endangered Species Act (ESA). Federal action agency must submit consultation initiation package which describes: <ul style="list-style-type: none"> • Proposed project/action • Listed species in action area • Effects to listed species/critical habitat • Measures to avoid, reduce, or eliminate adverse effects to listed species/critical habitat • Determination of effect to listed species/critical habitat
<i>Service's Role/Responsibilities</i>	Upon receipt of ITP application, the Services must: <ul style="list-style-type: none"> • Review Application and HCP • Issue EA/EIS under the National Environmental Policy Act • Conduct Section 7 Consultation 	Upon receipt of consultation initiation package, the Services must: <ul style="list-style-type: none"> • Determine whether package is complete • If complete, formulate Biological Opinion with Incidental Take

	<ul style="list-style-type: none"> • Place Notice of Application in Federal Register to commence 30-day public comment period. • Issue Record of Decision including a response to public comments • Issue Signature Package (Biological Opinion, Set of Findings, Implementing Agreement, NEPA Decision Document, ITP). • Issue/Deny ITP 	Statement, Reasonable and Prudent Measures, Terms and Conditions, and Conservation Recommendations.
<i>Unforeseen/Extraordinary Circumstances</i>	<p>No Surprises Policy</p> <ul style="list-style-type: none"> • If unforeseen circumstances arise, the Services will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources so long as HCP is implemented in good faith. <p>HCP Amendments</p> <ul style="list-style-type: none"> • Required if Applicant wishes to modify project, activity, or conservation program. 	Reinitiate Section 7 consultation if one of four triggers are met (see 50 CFR 402.16)
<i>Time Frames</i>	<ul style="list-style-type: none"> • HCP Development Phase: Flexible (typically 1-2 years) • Permit Application Processing including preparation of EA/EIS and Biological Opinion: 1 year • Permit Duration: Flexible • Post Issuance Phase (e.g., monitoring, conservation actions): Duration of Permit 	<ul style="list-style-type: none"> • Federal Agency Develops Consultation Initiation Package: Flexible (typically less than 1 year) • Services issue Biological Opinion: 135 days.

Opportunities for Public Engagement under Section 7 and 10 of the ESA:

For permits proposed to be issued under section 10 of the ESA, the public is afforded at least two opportunities to participate: 1) During the National Environmental Policy Act process when we issue a draft Environmental Assessment/Environmental Impact Statement for review and comment; and 2) when we issue a Notice of Application in Federal Register for public comment. The section 7 consultation process is between the lead Federal action agency and the consulting agency (either NMFS or USFWS) and there are no public noticing or public comment requirements or practices. The opportunity for public comment/input is typically through the lead Federal agency's environmental review or licensing/permitting process (e.g., there are public comment opportunities during the FERC licensing process and the USACE project permitting process).