

Suggested Contents for Biological Evaluations and Biological Assessments

When you prepare a Biological Evaluation (BE) or Biological Assessment (BA), keep in mind that the people who read or review this document may not be familiar with the project area or what you are proposing. Your BE or BA should present a clear line of reasoning that explains the proposed project and how you determined the effects of the project on each threatened or endangered species in the project area. Try to avoid technical jargon that is not readily understandable to people outside your agency or area of expertise. Remember, this is a **public document**. Some things to consider and include (if appropriate) in your BE or BA follow.

1. What is the difference between a Biological Assessment and a Biological Evaluation?

By regulation, a Biological Assessment is prepared for "major construction activities" considered to be Federal actions significantly affecting the quality of the human environment as referred to in the National Environmental Policy Act of 1969 (NEPA) [(42 U.S.C. 4332(2)(C)]. A BA is required if listed species or critical habitat may be present in the action area. A BA also may be recommended for other activities to ensure the agency's early involvement and increase the chances for resolution during informal consultation. Recommended contents for a BA are described in 50 CFR §402.12(f).

Biological Evaluation is a generic term for all other types of analyses. Although agencies are not required to prepare a Biological Assessment for non-construction activities, if a listed species or critical habitat is likely to be affected, the agency must provide the Service with an evaluation on the likely effects of the action. Often this information is referred to as a BE. The Service uses this documentation along with any other available information to decide if concurrence with the agency's determination is warranted. Recommended contents are the same as for a BA, as referenced above.

The BAs and BEs should not be confused with Environmental Assessments (EA) or Environmental Impact Statements (EIS), which may be required for NEPA projects. These EISs and EAs are designed to provide an analysis of multiple possible alternative actions on a variety of environmental, cultural, and social resources, and often use different definitions or standards.

2. What are you proposing to do?

- o Describe the project. A project description will vary, depending on the complexity of the project. For example, describing the placement and construction of a new microwave tower may be relatively simple, but describing an alternative for improving range management likely would be more detailed and complex. Include sketches if they will help others understand your

proposed action and its relationship with the species' habitat.

- o How are you (or the project proponent) planning on carrying out the project? What tools or methods may be used? How will the site be accessed?
- o Describe the project area. Always include a map (topographic maps are particularly helpful). Provide photographs including aerials, if available. Describe the project area (i.e., topography, vegetation, condition/trend).
- o Describe current management or activities relevant to the project area. How will your project change the area?
- o Supporting documents are very helpful. If you have a mining plan, research proposal, NEPA or other planning document or any other documents regarding the project, attach them to the BE or BA.

3. What threatened or endangered species may occur in the project area?

A request for a species list may be submitted to the Service, or the Federal action agency or its designated representative may develop the list. If you have information to develop your own lists, the Service should be contacted periodically to ensure that changes in species' status or additions/deletions to the list are included. Sources of information include, but are not limited to, the Forest Service, National Park Service, Bureau of Land Management, or other Federal agencies; State Game and Fish Departments; members of the public or academic community; scientific journals, books and various informational booklets; and the Internet. Due to budget constraints and loss of personnel, some Ecological Services Field Offices only provide general, county-wide species lists.

Use your familiarity with the project area when you develop your species lists. Sometimes a species may occur in the larger regional area near your project, but the habitat necessary to support the species is not in the project area (including areas that may be beyond the immediate project boundaries, but within the area of influence of the project). If, for example, you know that the specific habitat type used by a species does not occur in the project area, it does not need to appear on the species list for the project. However, documentation of your reasoning is helpful for Service biologists or anyone else that may review the document.

4. Have you surveyed for species that are known to occur or have potential habitat in the proposed project area?

The "not known to occur here" approach is a common flaw in many BA/BEs. The operative word here is "known." Unless adequate surveys have been conducted or adequate information sources have been referenced, this statement is difficult to interpret. It begs the

questions "Have you looked?" and "How have you looked?" Always reference your information sources.

Include a clear description of your survey methods so that the reader can have confidence in your results. Answer questions such as:

- o How intensive was the survey? Did you look for suitable habitat or did you look for individuals? Did the survey cover the entire project area or only part of it? Include maps of areas surveyed if appropriate.
- o Who did the surveys and when? Was the survey done during the time of year/day when the plant is growing or when the animal can be found (its active period)? Did the survey follow accepted protocols?
- o If you are not sure how to do a good survey for the species, the Service recommends contacting species experts. Specialized training is required before you can obtain a permit to survey for some species.
- o *Remember that your evaluation of potential impacts from a project does not end if the species is/are not found in the project area. You still must evaluate what effects would be expected to the habitat, even if it is not known to be occupied.*

5. Provide background information on the threatened or endangered species in the project area.

Describe the species in terms of overall range and population status. How many populations are known? How many occur in the project area? What part of the population will be affected by this project? Will the population's viability be affected? What is the current habitat condition and population size and status? Describe the related items of past management for the species, such as stocking programs, habitat improvements, or loss of habitat or individuals caused by previous projects.

6. How will the project affect the threatened or endangered species or critical habitat that occurs in the project area?

- o If you believe the project will not affect the species, explain why.
- o If you think the project may affect the species, explain what the effects might be. The Endangered Species Act requires you to consider all effects when determining if an action funded, permitted, or carried out by a Federal agency may affect listed species. Effects you must consider include direct, indirect, and cumulative effects. Effects include those caused by interrelated and interdependent actions, not just the proposed action. Direct effects are those caused by the action and occur at the same time and place as the action. Indirect effects are caused by the action and are later in time but are reasonably certain

to occur. Interrelated actions are part of a larger action and depend on the larger action for their justification. Interdependent actions have no significant independent utility apart from the action under consideration. Cumulative effects are those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation.

- o Describe measures taken to avoid, reduce, or eliminate adverse effects or enhance beneficial effects to the species. Refer to conversations you had with species experts to achieve these results.
- o Consider recovery potential if the project area contains historic range for a species.
- o Evaluate designated critical habitat areas by reviewing the physical or biological features essential to the conservation of the species. *Even if no critical habitat has been designated for a species, the evaluation of the project effects must include effects to the habitat, not just the species.*

7. What is your decision? The Federal action agency must make a determination of effect.

Quite frequently, effect determinations are not necessarily wrong; they simply are not justified in the assessment. The assessment should lead the reviewer through a discussion of effects to a logical, well-supported conclusion. Do not assume that the Service biologist is familiar with the project and/or its location, and there is no need to fully explain the impact the project may have on listed species. If there is little or no connection or rationale provided to lead the reader from the project description to the effect determination, we cannot assume conditions that are not presented in the assessment. Decisions must be justified biologically. The responsibility for making the determination of effect falls on the Federal action agency; however, the Service may ask the agency to revisit its decision or provide more data if the conclusion is not adequately supported by biological information.

You have three choices for each listed species or area of critical habitat:

1. "No effect" means there are absolutely no effects of the project, positive or negative. "No effect" does not include a small effect or an effect that is unlikely to occur. If effects are insignificant (in size) or discountable (extremely unlikely), a "may affect, but not likely to adversely affect" determination is appropriate.
2. "May affect - is not likely to adversely affect" means that all effects are beneficial, insignificant, or discountable.

Beneficial effects have contemporaneous positive effects without any adverse effects to the species or habitat (i.e., there can not be "balancing," wherein the benefits of the project would be expected to outweigh the adverse effects - see #3 below). Insignificant effects relate to the size of the impact (and should not reach the scale where take occurs). Discountable effects are those extremely unlikely to occur. These determinations require **written** concurrence from the Service. Based on best judgement, a person would not: (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur.

3. "May affect - is likely to adversely affect" means that all adverse effects can not be avoided. A combination of beneficial and adverse effects is still "likely to adversely affect," even if the net effect is neutral or positive. Adverse effects do not qualify as discountable-simply because we are not certain they will occur. The probability of occurrence must be extremely small to achieve discountability. Likewise, adverse effects do not meet the definition of insignificant because they are less than major. If the adverse effect can be detected in any way or if it can be meaningfully articulated in a discussion of the results, then it is not insignificant, it is likely to adversely affect. This requires formal consultation with the Service.

A fourth finding is possible for proposed species or proposed critical habitat:

4. "Is likely to jeopardize/adversely modify proposed species/critical habitat" is the appropriate conclusion when the action agency identifies situations in which the proposed action is likely to jeopardize the proposed species, or destroy or adversely modify the proposed critical habitat. If this conclusion is reached, conference is required.

List the species experts you contacted when preparing the BE or BA but avoid statements that place the responsibility for the decision of "may affect" or "no effect" on the shoulders of the species experts. Remember, this decision is made by the Federal action agency.

Provide supporting documentation, especially any agency reports or data that may not be available to the Service. Include a list of literature cited.

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OUTLINE EXAMPLE
FOR A
BIOLOGICAL ASSESSMENT OR BIOLOGICAL EVALUATION

- A. Cover letter - VERY IMPORTANT - Include purpose of consultation, project title, and consultation number (if available). A determination needs to be made for each species. You have three options: 1) a "no effect" determination; 2) requesting concurrence with an "is not likely to adversely affect" determination; 3) a "may affect, is likely to adversely affect" determination, and a request for formal consultation. If proposed species or critical habitat are included, state whether the project is likely to result in jeopardy to proposed species, or the destruction or adverse modification of proposed critical habitat.
- B. Project description - Describe the proposed action and the project area. Be specific and quantify whenever possible.
- C. For Each Species
 - 1. Description of affected environment (quantify whenever possible)
 - 2. Description of species biology
 - 3. Describe current conditions for each species
 - a. Rangeland
 - b. In project area
 - c. Cumulative effects of State and private actions in project area
 - d. Other consultations of Federal action agency in area to date
 - 4. Describe critical habitat (if applicable)
 - 5. Describe effects of proposed action on each species and/or critical habitat.
 - a. Direct
 - b. Indirect
 - c. Interrelated and interdependent actions
 - d. Incidental take
- D. Conservation measures (protective measures to minimize effects for each species)
- E. Conclusions (effects determination for each species)

- F. Literature Cited
- G. List of Contacts Made/Preparers
- H. Maps/Photographs