

# Federal Project Review and the Endangered Species Act

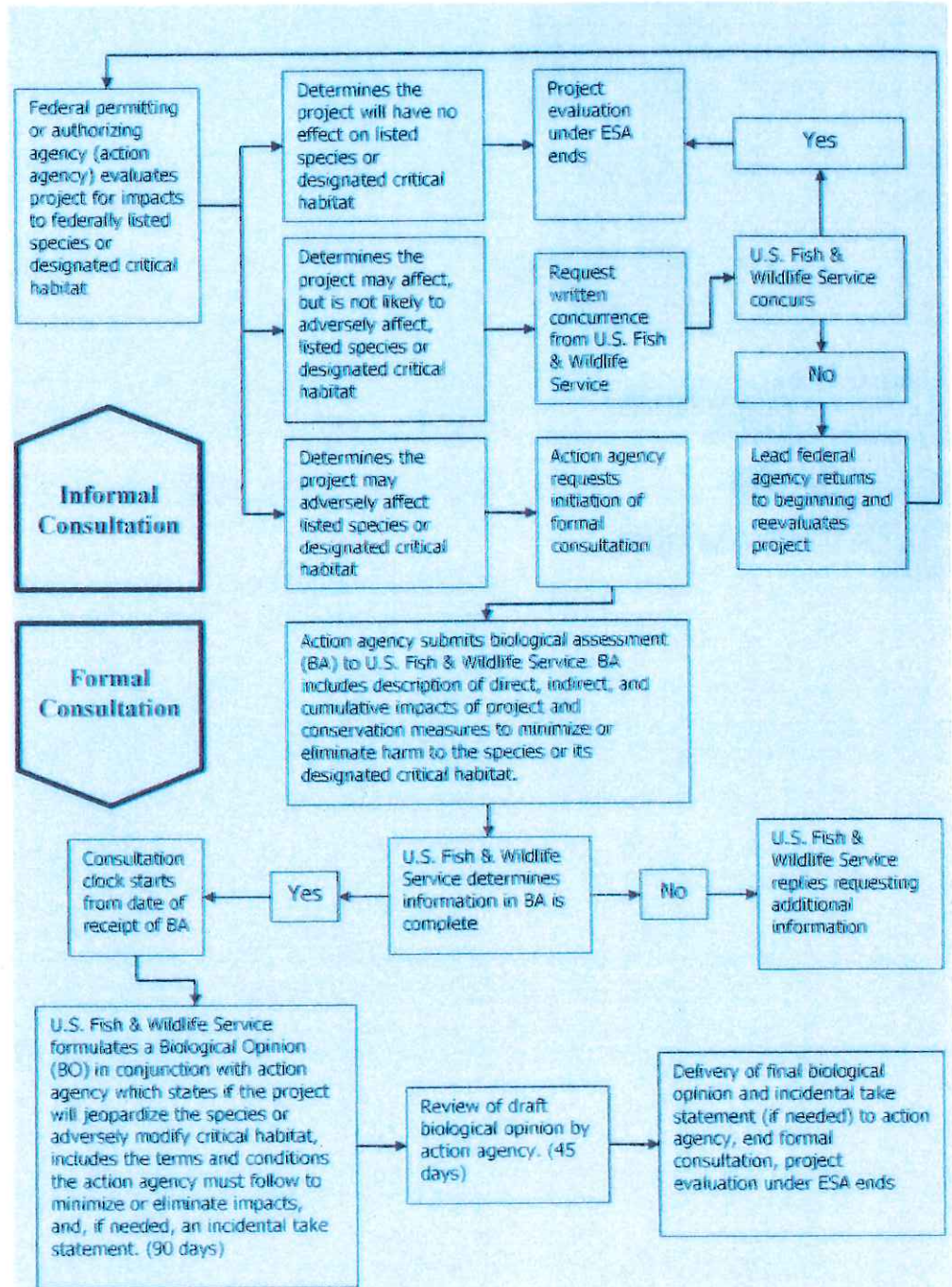
The Endangered Species Act (Act) directs all federal agencies to participate in endangered species conservation. Specifically, section 7 of the Act charges federal agencies with the responsibility for aiding in the conservation of listed species (section 7(a)(1)) and requires them to ensure their activities won't jeopardize the continued existence of listed species or adversely modify designated critical habitat (section 7(a)(2)).

Through the section 7(a)(2) process, set forth in the Act and outlined in the accompanying regulations (50 CFR Ch. IV § 402.10 - § 402.16), federal agencies must evaluate projects they fund or authorize for their impacts—direct, indirect, and cumulative—to federally listed species and critical habitat and work to minimize or eliminate those impacts. This consultation process has both informal and formal stages.

Informal consultation begins when the funding or authorizing federal agency (action agency) makes a determination as to whether a listed species or critical habitat will be affected by their project. If they determine that there will be no effect, the consultation process ends. If they conclude that the project may affect, but is not likely to adversely affect, a listed species or critical habitat and the Service agrees, the consultation is over.

If the action agency determines that the project may adversely affect a listed species or critical habitat, the process then moves into formal consultation. The action agency prepares a biological assessment for the project and submits it to the Service. A biological assessment includes a description of the project's impacts and what conservation measures will be implemented to minimize or eliminate harm to the species or its critical habitat.

If the biological assessment is complete, the Service responds with a biological opinion, which states whether the project will jeopardize the species or adversely modify critical habitat. If a jeopardy or adverse modification



determination is made, the biological opinion typically identifies any reasonable and prudent alternatives that could allow the project to move forward. If the Service determines that the action will not jeopardize the species or adversely modify critical habitat, the biological opinion may include an incidental take statement authorizing the take ("take" is defined as harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting a listed animal or attempting to engage in any such conduct) of a limited number of individuals during the course of the project. The biological opinion also outlines terms and conditions the action agency must follow to minimize or eliminate impacts to the species.

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