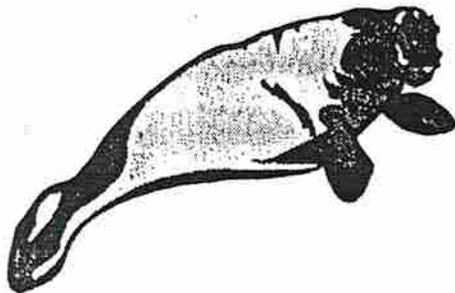

THE ENDANGERED SPECIES ACT

Section 7 Consultation Explanation and Overview



Richard R. Hannan
U.S. Fish and Wildlife Service
Atlanta, Georgia

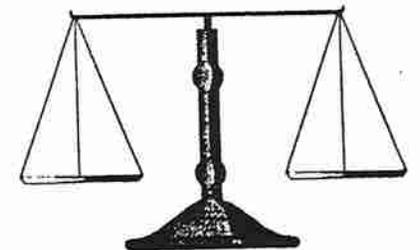
CONSULTATION OUTLINE

- Legal Basis
 - Affirmative Conservation Mandate
 - Duty to Avoid Jeopardy
 - Scope of the Action
 - Informal Consultation
 - Formal Consultation
 - Biological Opinion
 - Reasonable and Prudent Alternatives
 - Incidental Take Statement
 - Reinitiation Clause
-
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CONSULTATION REQUIREMENTS

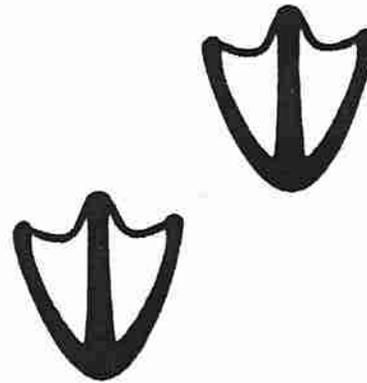
Legal Basis

- Statutory Authority - 16 U.S.C. Section 1531
Endangered Species Act of 1973, as Amended
- Regulations - 50 C.F.R. 402
Interagency Cooperation
Regulations



CONSULTATION REQUIREMENTS

- Affirmative Conservation Mandate
- Duty to Avoid Jeopardy



CONSULTATION REQUIREMENTS

Affirmative Conservation Mandate

- Section 7(a) (1) - "All Federal Agencies Shall. . . Utilize Their Authorities on Furtherance of the Purposes of the (ESA) by Carrying Out Programs for the Conservation of Endangered Species and Threatened Species. . . ."



CONSULTATION REQUIREMENTS

Duty to Avoid Jeopardy

- Section 7(a) (2) - "Each Federal Agency Shall. . . Insure That **Any Action Authorized, Funded, or Carried Out** by Such Agency is Not Likely to Jeopardize the Continued Existence of Any Endangered or Threatened Species. . . "

The Law Clearly States That It Is the **OBLIGATION** of the Federal Agency to Avoid Jeopardizing Endangered and Threatened Species.

CONSULTATION REQUIREMENTS

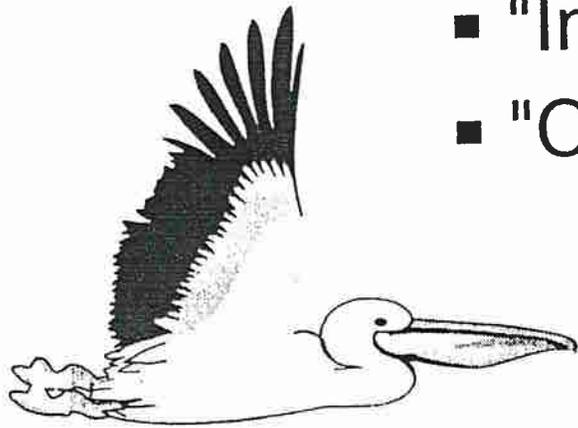
Duty to Avoid Jeopardy

- The Federal Agency in Making This Determination Must Rely on the "**Best Available Scientific and Commercial Information.**"

CONSULTATION REQUIREMENTS

Scope of the Action

- "Action Area"
- "Effects of the Action"
- "Indirect Effects"
- "Cumulative Effects"



CONSULTATION REQUIREMENTS

Scope of the Action

- The "*Action Area*" Includes "All Areas to be Affected Directly or Indirectly by the Federal Action and Not Merely the Immediate Area Involved in the Action."

CONSULTATION REQUIREMENTS

Scope of the Action

- The "*Effects of the Action*" Includes "The Direct and Indirect Effects of an Action on the Species or Critical Habitat, Together With the Effects of Other Activities That Are Interrelated or Interdependent. . . ."

CONSULTATION REQUIREMENTS

Scope of the Action

- "*Indirect Effects*" Are "Those That Are Caused by the Proposed Action and Are Later in Time, But Still Are Reasonably Certain to Occur."

CONSULTATION REQUIREMENTS

Scope of the Action

- "*Cumulative Effects*" Are "Those Effects of Future State or Private Activities. . . That Are Reasonably Certain to Occur Within the Action Area. . . "

CONSULTATION REQUIREMENTS

When is Consultation Required?

- Consultation is Required Anytime a "*May Affect*" Situation Occurs. The Effects of the Proposed Project Triggering this Determination Can be Either Positive or Negative.
- The Federal Agency May Initiate Either Informal or Formal Consultation.

INFORMAL CONSULTATION

- Informal Consultation is an Optional Process That Includes All Discussions, Correspondence, Etc., Between the Service and the Federal Agency or Applicant.
- Informal Consultation is Designed to Assist the Federal Agency in Determining Whether Formal Consultation or a Conference is Needed.

INFORMAL CONSULTATION

- If the Federal Agency Determines That the Action "**Is Not Likely to Adversely Affect**" Listed Species or Critical Habitat, and
- The Service Concurrs in Writing, the Consultation is Terminated and No Further Action is Required.
- The Service May Recommend Modification to Projects to Eliminate the "May Adversely Affect" Situation.

FORMAL CONSULTATION

- If the Federal Agency Determines That Their Proposed Action "**May Adversely Affect**" a Listed Species or Critical Habitat, Formal Consultation is Required.
- To Initiate Formal Consultation, the Federal Agency Must Submit a Written Request to the Service.

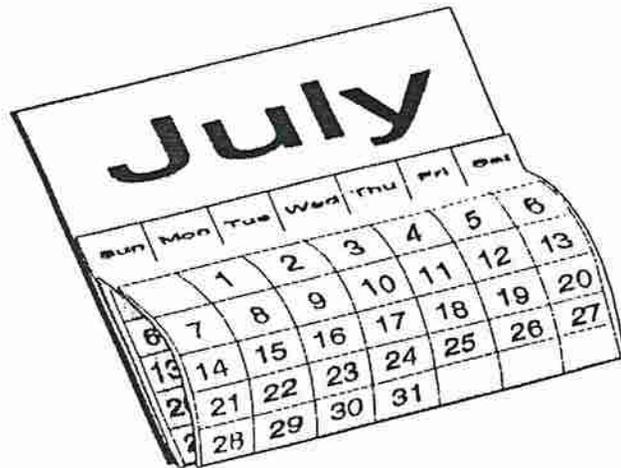
FORMAL CONSULTATION

- The Request Shall Include:
 - A Description of the Action,
 - A Description of the Area Affected,
 - The Listed Species or Critical Habitat That May Be Affected,
 - A Description of the Effects of the Action on the Listed Species or Critical Habitat,
 - Any Relevant Reports (EIS, EA or BA), and
 - Any Other Available Information.

FORMAL CONSULTATION

Timeframes

- 135 Day Period
 - 90 Day Consultation Period
 - 45 Days to Prepare Biological Opinion



FORMAL CONSULTATION

Timeframes

- Exceptions

- A 60 Day Extension May be Granted With the Approval of the Federal Agency and Notice to the Applicant.
 - A Longer Extension May be Granted With the Approval of the Applicant.
 - When No Applicant is Involved the Federal Agency and Service Can Agree to Any Timeframe Necessary.
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FORMAL CONSULTATION

- Formal Consultation Ends With the Issuance of a Biological Opinion.
 - Conclusions
 - The Biological Opinion Identifies Whether the Action. . .
 - "Is" or
 - "Is Not"
 - "Likely to Jeopardize the Continued Existence of a Listed Species or Adversely Modify Critical Habitat."

BIOLOGICAL OPINION

Contents

- Jeopardy/No Jeopardy Determination
- Reasonable and Prudent Alternatives When Jeopardy Determination Made
- Incidental Take Statement
- Reasonable and Prudent Measures and Terms and Conditions to Reduce Take
- Conservation Recommendations (Discretionary)
- Reinitiation Clause

REASONABLE AND PRUDENT ALTERNATIVES

- RPAs are Actions the Service Recommends to Avoid Jeopardy/Adverse Modification to a Listed Species/Critical Habitat. They Must. . .
 - Be Implemented in a Manner Consistent With the Purposes of the Action,
 - Be Consistent With the Scope of the Agency's Authority and Jurisdiction,
 - Be Economically and Technologically Feasible, and
 - Be Designed to Avoid Jeopardy/Adverse Modification.
-
-

INCIDENTAL TAKE STATEMENT

- Refers to the Takings That Result From Carrying Out an Otherwise Lawful Activity by a Federal Agency or Applicant.
- Only Applies When the Take Will Not Violate Section 7(a) (2) of the ESA.

INCIDENTAL TAKE STATEMENT

- Specifies the Amount or Extent of Take
- Includes Reasonable and Prudent Measures to Minimize Take (Mandatory)
- Sets Forth Terms and Conditions (Mandatory)
- Specifies Procedures to Handle or Dispose of Any Individuals Taken
 - Reasonable and Prudent Measures and Terms and Conditions Cannot Alter the Basic Design, Scope, Duration, or Timing of the Action.

REINITIATION CLAUSE

- The Federal Agency Must Reinitiate Formal Consultation With the Service, if. . .
 - The Scope of the Action is Changed,
 - New Information on the Nature or Extent of Impacts to Listed Species or Critical Habitat is Found, or
 - Amount or Extent of Incidental Take is Exceeded.

