Rendering a Biological Conclusion

Project Development and Environmental Analysis Branch		Approved: 7/13/2009 Version 1.0

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Purpose

The purpose of this procedure is to give guidance on rendering biological conclusions, which is an important part of completing survey reports and obtaining US Fish and Wildlife Service (USFWS) concurrence when required and plays a part in the decision-making process for the project. This procedure does not detail steps for performing a Biological Assessment. See the Biological Assessment procedure. (future link)

Responsibility

The biologist performing the survey is responsible for using the results from the survey to draw Biological Conclusions.

Scheduling and Time Constraints

The biological conclusion is part of the survey report and is, therefore, on the same schedule as the due date for the report.

Procedures

Procedure 1: Biological Conclusions

The following are guidelines to use to determine the biological conclusion (BC) for a species (animal or plant). There are four categories for these conclusions.

Step 1. Unresolved.

This conclusion is stated when habitat for a protected species may be present but species-specific surveys could not be conducted prior to the completion of the NRTR. There are occasions when the conclusion may still be “Unresolved” in the final environmental planning document although this is not preferable. In some situations, a conclusion of “May Affect” rather than “Unresolved” is used. With either of these calls, surveys for the species must be conducted and a BC rendered before the permit application process can be completed.

Step 2. No Effect

This is the appropriate conclusion when a given project will not affect listed species or critical habitat. It can be rendered when:

- A protected species is dismissed from occurring within the project study area because of the lack of suitable habitat for that species.
- A survey of suitable habitat, conducted during the appropriate survey window, results in the target species not being found and the Natural Heritage Program (NHP) database indicates there is no known population of the species within 1.0 mile of the project study area. (For plants only)

  Note: The exception to this is federally listed mussels and fish. If there is suitable habitat and the species exists in the watershed, nearby tributaries, or even miles upstream from the site, the conclusion may be "May Affect" until further investigation is conducted.

Step 3. May Affect – Not Likely to Adversely Affect

This is the appropriate conclusion when:

- A federally-listed species or its critical habitat occurs within a project study area, but the effects are expected to be discountable or insignificant.
- Potential habitat for a listed animal species exists in the project study area and a survey is conducted, but no individuals of the protected species are found to be present
- Suitable habitat for a listed plant species is present in the study area and a review of the NHP database reveals a known population within 1.0 mile of the project study area, even if individuals were not found during properly conducted surveys.
- Effects of the action are likely to be beneficial.

This biological conclusion requires that a concurrence letter be obtained from USFWS, even if the effects are likely to be beneficial.

Step 4. May Affect – Likely to Adversely Affect

This conclusion is rendered when:

- A federally-listed species or critical habitat occurs in the project study area and the proposed project may cause adverse effects to individuals of the species or to critical habitat.
- A federally-listed species is assumed to be present and the proposed project may cause adverse effects to individuals of the species.

This determination requires a Biological Assessment (BA) written by the Biological Surveys Group (BSG) and a formal Section 7 consultation with USFWS.

Procedure 2: Concurrence Letters to USFWS

Step 1. Letters requesting written concurrence from the USFWS originate only from the NES Environmental Coordination and Permitting Group (NES-ECAP).

Step 2. Written concurrence is required for any biological conclusion other that Unresolved or No Effect.

Step 3. A determination of May Affect – Likely to Adversely Affect requires NES-BSG to write a Biological Assessment for review by FHWA or other lead federal agency. FHWA then sends it to USFWS. From this BA, the USFWS will issue a Biological Opinion, at which point the formal consultation process is completed.

Step 4. If project plans or a biological conclusion changes after the submission of a concurrence request, the changes should be detailed and a second concurrence request should be made to USFWS.

Background

A biological conclusion is a determination (or finding) of whether or not a given project will have any sort of effect on any federally endangered or threatened species or critical habitat. It is typically a short statement with supporting information. These determinations are required under Section 7 of the Endangered Species Act for federally funded or authorized projects, as well as federal agency activities. A biological conclusion of May Affect will require a Section 7 consultation with USFWS. An effect on a listed species or critical habitat may occur as a direct or indirect result of a given project, including interrelated or interdependent actions.

Policy, Regulatory, and Legal Requirements

- Endangered Species Act, Section 7

Warnings and Precautions

Federally funded or federally permitted projects need to be in compliance with Section 7 of the Endangered Species Act.

Resources and Tools

Aquatic species reports for concurrence must contain:

- Vicinity map
- Aerial map of project crossing indicating any known species records, dischargers or 303D listed stream sections in the area.
- Road name and # for each road mentioned in report
- Distance from the crossing to the confluence with the next downstream waterway
- Name of the river basin in which the streams are located, whether the stream is classified as 303D and the explanation for this classification
- List of nearby NPDES discharges and the corresponding permit number
- Distance to the nearest known record of the endangered species in question and its location relative to the project site
- List of any impoundments or reservoirs that separate the project from the nearest known record
- Description of any beaver activity that may have been seen in the survey reach
- List of all substrate types and identify the dominant and subdominant substrate types
- Description of the overall quality of the instream habitat
- Description of stream buffer (width, vegetation, etc.)
- Table listing species encountered and number of individual mussel or fish of each species
- Catch per unit effort for mussel surveys
- Person hours spent to complete the survey
- Qualifications of all investigators

Concurrence Letter Template (link to word document)

Biological Conclusion for NRTRs must contain:

- Briefly state species' habitat requirements (1-2 sentences)
- Describe the habitat and/or community that is present in project area
- State the date of the survey/site visit
- Explain methodology of the survey (how many man hours spent on survey, plant by plant survey, transects, habitat assessment, etc.)
- State if habitat is present
- If habitat present or not present, state why so, be specific
- State the quality of habitat, if present, and if any species were found
- If habitat is present, state where/which communities/habitat is present within the project area
- State date of NHP review and what is known within 1.0 mile of project site (list federal species)

Biological Conclusions need to be specific in what is there and what was surveyed, for getting concurrence and for looking back for resurveys, etc.

For Red Cockaded Woodpeckers, Biological Conclusions should include specific information about the location and extent of habitat and the age of the pine stands. If habitat is found it should be stated that a one half mile was surveyed and indicate what was found. If this was not done, it should be explained why in the document.

Contacts

- For questions about performing this procedure or suggestions to change this procedure, contact: Neil Medlin knmedlin@ncdot.gov (919) 707-6138

Flowchart

- Add link to Section 7 Consultation Flowchart from ESA Handbook