

ESA Overview Module 4 – Section 7, Interagency Consultation Text

Special Cases (slides 55 - 60)

Special Cases

We describe instances that don't fit neatly into a consultation category as "special cases". They include early and emergency consultations and conferencing. We won't discuss early consultation, other than to say it is a process requested by a Federal agency on behalf of a prospective applicant under 7(a)(3) of the Act

Emergency consultation – is consultation resulting from acts of God, disasters, casualties, national defense or security emergencies. We'll discuss emergency consultation in more detail in the next slide.

Conferencing is a discussion between a Federal agency and the Services regarding the impact of an action on proposed species or proposed critical habitat. The process of conferencing and consultation are similar and can provide comparable end products and resolutions.

In emergency consultation, again that's results from acts of God, disasters, casualties, national defense or security emergencies an action agency can incorporate listed species concerns into their emergency response activities. If a listed species or critical habitat is involved, emergency consultation can be initiated at the beginning of the incident but it's generally not completed until the emergency is resolved.

Emergency consultation is about the effects of responding to the emergency, not the emergency itself. For example, responding to a wild fire may include cutting firebreaks through a forest, withdrawing water from a stream, or low-level flying over nesting habitat. These actions may adversely affect listed species or critical habitat. The effect of those response activities is what the emergency consultation considers.

Other than wildfires other items include such things as oil spills, floods, tornadoes, or some other event.

Emergency consultation documents the impacts of the response to the emergency. There is no after-the-fact approval of action. The purpose of the consultation is to document the new baseline for the species and its critical habitat.

So, what do we do in the case of an Emergency Consultation?

Above all, parties are not to delay emergency response actions.

Agencies may notify the Services and seek recommendations to minimize effects on listed species or critical habitat.

Services will notify the Federal agency if jeopardy is likely.

But again the consultation process is typically completed at the conclusion of the emergency response.

Conferencing is required when an action is likely to jeopardize a proposed species or adversely modify proposed critical habitat.

This will result in a formal conference opinion.

Your agency may have its own policies for when to engage in conferencing. Make sure you are aware of your agency's policies.

In general, conferencing may be formal or informal for proposed species or proposed critical habitat

Recommendations to minimize or avoid adverse effects may be provided by the Service.

If take is anticipated, it may be acknowledged, but it does not become effective until the species listing is finalized

Conferencing may result in a letter, memo or formal conference opinion. A formal conference opinion can be converted to a biological opinion once the species is listed.

Terms and conditions may also be included but these do not need to be adhered to until the species listing becomes final

Our exercises begin with the next slide. You'll be provided with a series of questions and scenarios to test how well you've mastered the content in this module on Section 7 of the Endangered Species Act covering Interagency Cooperation.