

CHAPTER 4

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CHAPTER 4

FEDERAL AND STATE ENDANGERED SPECIES ACT PROCEDURES

4-1 INTRODUCTION

The California Department of Transportation (Caltrans) is committed to the protection and preservation of California's unique and diverse environment. All Caltrans projects must be evaluated to determine if any proposed species, listed species, candidate species, species of concern, rare species, and proposed and designated critical habitat are present in the project area at the earliest time possible in the project development process. These species are known as special status species.

This chapter provides an overview of the laws, regulations, policies, and procedures related to plant and animal species regulated under the Federal Endangered Species Act (FESA) (as amended, 16 United States Code [USC] 1531 et seq.) and the California Endangered Species Act (CESA) (Fish and Game Code, Sections 2050 et seq.). This chapter is a summary of Caltrans procedures and does not supersede Federal and State policies and regulations.

4-1.1 Federal Endangered Species Act of 1973

The purpose of the FESA is to provide a means whereby the ecosystems upon which threatened and endangered species depend may be conserved and to provide a program for the conservation of such species. FESA mandates all Federal departments and agencies to conserve listed species and to utilize their authorities in furtherance of the purposes of FESA. FESA provides specific mechanisms to achieve its purposes, and Section 7 is one of those. Section 7 requires that Federal agencies develop a conservation program for listed species (Section 7(a)(1)) and that they avoid actions that will further harm species and their critical habitat (Section 7(a)(2)).

Although Caltrans is not a Federal agency, on August 10, 2005, the President signed into law the [Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users \(SAFETEA-LU\)](#). SAFETEA-LU establishes a pilot program allowing Caltrans to assume all of the FHWA environmental responsibilities under NEPA and other environmental laws (NEPA Delegation). This delegation authority is limited to highway projects, including Local Assistance Federal Aid projects, and it could be for specific projects within the State or a programmatic delegation.

As of July 1, 2007, Caltrans has accepted this environmental responsibility, and therefore, will be the Federal lead agency for projects subject to Section 7 of FESA. As a result, District Biologists, along with the project development team (PDT), prepare [Biological Assessments \(BA's\)](#) and corresponds directly with the Service(s). Refer to the [SER, Chapter 38, NEPA Delegation](#), for specific information concerning SAFETEA-LU.

For Local Assistance projects, the [Local Agency](#) and/or their qualified consultants are responsible for preparing the [Natural Environment Study \(NES\)](#), [Natural Environment Study, Minimal Impact \(NES MI\)](#), [Biological Assessment \(BA\)](#), and other reports, as necessary. The District Biologist is responsible for providing oversight, guidance, and approval. Section 7 consultation can only be initiated by the District

Biologist. The Local Agency is not allowed under NEPA Delegation to initiate consultation with the Service(s).

The United States Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS), collectively referred to as the Service(s), share responsibility for administration of FESA. USFWS retains jurisdiction over terrestrial species and freshwater aquatic species, while NMFS retains jurisdiction over marine species and most anadromous fish. Section 7 of FESA requires Caltrans and Caltrans' Local Assistance to regularly consult with these two agencies to assess the potential effects of its projects upon listed species and their habitats.

4-1.2 Section 4 – Listing Process

FESA consists of 18 Sections; the most commonly referred to Sections are 4, 7, 9, and 10. For continuity and understanding, the Sections will be discussed in the following order: Sections 4, 9, 4(d), 10, and 7. It is important to understand how species are listed to help with effects determinations in the environmental document. Species are listed on the basis of the best scientific and commercial data available, the species biological status, and threats to its existence. The Service(s) provide reasons for listing a species and threats affecting the species; this information can be helpful in making effects determinations.

FESA provides for listing plant and animal species into the following categories:

- Listed Threatened Species
- Listed Endangered Species
- Proposed Threatened Species
- Proposed Endangered Species
- Candidate Species (awaiting listing)

If the Service(s) determine that a species is warranted listing, they must propose a rule in the [Federal Register](#) describing their basis for the ruling. After the proposed rule is published in the Federal Register, the public comment period begins. Caltrans may provide information during the comment period regarding the status of the species and may call on District Biologists with knowledge of these species for information regarding the effects of the listing to project delivery. Following the comment period, the Service(s) will determine if the proposed rule will be accepted, revised, or withdrawn. Designated critical habitat for that species is typically determined one year after the species is listed.

4-1.3 Section 9 – Prohibited Acts

Once listed, Section 9 of FESA makes it unlawful for any person to “take” threatened or endangered species. Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Harm is further defined to include significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including, breeding, spawning, rearing, migrating, feeding or sheltering.

Significant habitat modification that results in the impairment of species essential behavioral patterns may constitute a violation of the Section 9 take prohibition. The take definition is not applied to plants; however, the effects of federal actions must be avoided and minimized and evaluated in the BA. In addition, California has its own laws restricting activities involving listed plant species. For additional information on FESA and plants refer to Section 4-9.

4-1.4 Section 4(d) – Special Rule Reports

In some circumstances, the standard regulatory provisions under FESA for a threatened species may not be the necessary and appropriate provisions for the conservation of that species. In those situations, the Secretary of the Department of the Interior or the Department of Commerce has the discretion under Section 4(d) of FESA to determine in a special rule those measures and prohibitions that are necessary and advisable for the conservation of that particular species.

Section 4(d) of FESA is a management program establishing prohibitions that apply to threatened (not endangered) species, subspecies, and Distinct Population Segments (DPS); they are designed to preclude species from becoming endangered. These 4(d) rules take the place of the normal protections of FESA and may either increase or decrease FESA's normal protections. Section 4(d) rules apply to mammals, birds, reptiles, amphibians, fishes, and crustaceans.

The section 4(d) rule that typically affects District Biologists are those issued for salmonids. In June, 2000, NMFS adopted a rule prohibiting the “take” of 14 groups of salmon and steelhead listed as threatened under FESA (July 10, 2000, 65 FR 42422). NMFS adopted the take rule under section 4(d) of FESA. This rule prohibits anyone from taking a listed salmon or steelhead, *except* in cases where the take is associated with an approved program. The 4(d) rule creates a mechanism by which application of FESA section 9(a)(1) take prohibitions may be limited for land and water activities that NMFS has found will conserve listed salmonids’ habitat, yet may incidentally take species.

Section 4(d) applies particularly to “take,” which can include any act that kills or injures listed fish or wildlife species, and may include habitat modification. FESA prohibits ANY take of species listed as threatened or endangered; however, some take of threatened species that does not interfere with fish and wildlife species survival and recovery can be allowed under section 4(d).

The District Biologist should be aware of any section 4(d) rules that may apply in the project area at the initial stages of project development so that measures and prohibitions under Section 4(d) are considered from the on-set of the project. The [USFWS provides a list of threatened species with special 4\(d\) rules](#).

4-1.5 Section 10 – Exemptions

Section 10 allows the Service(s) to issue incidental take permits (ITP) for otherwise prohibited actions pursuant to Section 9 of FESA if such taking of listed species is in the course of otherwise lawful activities. There are two types of permits issued for take under FESA:

1. Recovery and Interstate Commerce Permits (Section 10(a)(1)(A)): For scientific research on a listed species or activities to enhance a listed species propagation or survival a Section 10(a)(1)(A) permit is required. Examples include, but are not limited to: abundance surveys, genetic research, relocations, capture and marking, and telemetric monitoring.
2. Incidental Take Permits (Section 10(a)(1)(B)): If engaged in an otherwise lawful activity where a listed species may be adversely affected, and the purpose of your activity is not scientific research or enhancement of a listed species, you may need to obtain an ITP.

Section 10(a)(1)(A) allows for permitting take of threatened or endangered species for scientific research, or purposes of propagation or survival. As a District Biologist, it may be necessary to obtain a scientific collection permit (SCP) for particular species, for survey purposes, or implementing conservation measures.

When non-federal agencies conduct an otherwise lawful activity that might incidentally, but not intentionally, take a listed species, an ITP (Section 10(a)(1)(B)) must first be obtained from the Service(s). Section 10(a)(1)(B) requires a Habitat Conservation Plan (HCP) for an ITP on *non-Federal lands*.

Although infrequently used, ITP's are issued for projects that use State funds only. When there is Federal funding or the project requires Federal decisions, such as permits, the Section 7 process is followed.

For example, if the project is a State only funded maintenance project, with no U.S. Army Corps of Engineers permit, Section 10(a)(1)(B) requires an ITP to take listed species. As a condition of the ITP, Caltrans must develop a HCP.

4-1.6 Section 7 – Interagency Cooperation

Interagency Cooperation, as defined in Section 7 of FESA, requires all Federal agencies to consult with the Service(s) if the Federal agency (and Caltrans under NEPA Delegation) determines that any action it funds, authorizes, or carries out may affect a listed species or its designated critical habitat. Section 7 has been amended several times since being signed into law in 1973. The latest requirements for consultation can be found at 50 CFR Part 402.

Specifically, Section 7(a)(1) directs the Secretary to review other programs administered by them and utilize such programs to further the purposes of FESA. It also directs all other Federal agencies to utilize their authorities in furtherance of the purposes of FESA by carrying out programs for the conservation of listed species pursuant to FESA.

Section 7(a)(2) requires that, “each Federal agency shall, in consultation with the Secretary of the Interior, ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of designated critical habitat.”

Under NEPA Delegation, Caltrans acts on behalf of the FHWA for Section 7 Interagency Cooperation (Caltrans is the Federal lead agency for projects subject to Section 7). Under Section 7, Caltrans must consult with the Service(s) when an action we carry out, fund, or authorize, may affect a proposed, threatened or endangered species.

Consistent Section 7 terminology is important when describing effects, determinations, and measures to comply with FESA. The Section 7 Consultation Handbook (and revisions as updated) prepared by the Service(s) is helpful in explaining the Section 7 processes, provides examples of various types of consultations, along with a glossary of terms. Terminology used in BA's must be consistent with the Section 7 Consultation Handbook. A Glossary of Terms is provided in [Appendix A](#).

The District Biologist should ensure they enter and constantly update the [STEVE](#) with all pertinent fields for tracking Section 7 Consultations with the Service(s).

4-2 PRELIMINARY ENVIRONMENTAL ANALYSIS REPORT (PEAR) PHASE

The initial review of existing data should be conducted during the PEAR development phase. For projects that require a Project Study Report-Project Development Support (PSR-PDS), a PEAR is prepared as part of the Project Initiation Document (PID). The PSR identifies the purpose and need, scope, schedule and estimated cost of a project. The PEAR provides the initial environmental evaluation of a project and all feasible alternatives before it is programmed. The PEAR estimates the scope, schedule, and costs

associated with gaining environmental approval. The information contained in the PEAR provides foundational information to the Project Development Team (PDT) as they begin studies in the Project Report phase, facilitating early consultation with the Service(s).

Based on the PEAR review, the District Biologist should determine whether additional field surveys are needed and identify the potential need for compensatory mitigation. The District Biologist must provide the environmental generalist with the scope, timeline, and information gathered from field reviews; the environmental generalist will then incorporate the presented information into the PEAR and Draft Workplan. For the timing of biological tasks in relation to the project development process refer to the [SER, Volume 1, Chapter 14, Biological Resources; Biological Processes Flowchart](#).

The scoping tool used for Federal-aid Local Assistance projects (off the State Highway System) is the Preliminary Environmental Study (PES) form. The Local Agency is required to complete the PES form first, and then follow the procedures set forth in Chapter 6 of the [Local Assistance Procedures Manual](#).

Local Agencies may not proceed with the final design of a project or request Authorization to Proceed with Right of Way or Construction until compliance with NEPA occurs, this includes FESA. Failure to follow this requirement will make the project ineligible for Federal Highway Administration (FHWA) reimbursement.

4-2.1 Coordination with the Project Development Team and the Service(s)

Early coordination requires the District Biologist to meet early in the project design phase with the project manager (PM) and the PDT to discuss the project in its beginning planning stages. The District Biologist and PDT must review the proposed project description and materials, be familiar with the project area, consider comments received during the project scoping process, and review existing sources of information known about the project on a regional scale. The timing of construction, surveys, scheduling, project costs, and other project specific discussions should also be discussed.

If there is a need for early coordination with the Service(s) during the PEAR phase, it is beneficial to obtain or review a list of potential special status species or designated critical habitat that may be present in the proposed project area to assist in focusing these early discussions (refer to section 4-2.2 for additional information on obtaining species lists).

Early coordination with the Service(s) under Section 7 can begin with Technical Assistance or Informal Consultation (refer to section 4-4.8, 4-4.10, and [Appendix B](#)). This may include discussions regarding what type of listed species or designated critical habitat may occur in the project area, what effect the proposed action may have on those species and habitat, and ways to identify, avoid, or minimize likely effects from the project. Coordinating early with the Service(s) can help facilitate agreement on mitigation and conservation actions that may reduce or eliminate project effects in order to arrive at a No Effect determination. Continuous coordination with the Service(s) throughout the project is necessary to ensure the consultation is processed in a timely manner and will facilitate and expedite the preparation of the BA (if necessary).

4-2.2 Species List

During the PEAR phase of project development the District Biologist should include in the PEAR analysis whether or not a BA may be required for the proposed project. This helps define the timelines for possible field studies, Section 7 consultation, as well as potential mitigation costs.

The District Biologist requests a species list to determine if special status species or designated critical habitat is present in the proposed project area. [Species list](#) updates or verifications must be done in line with FESA Section 7 consultation and [environmental document milestones](#) (eg: Draft Environmental Document (DED)/Final Environmental Document (FED)). Section 7 consultation and the preparation of the BA typically occur between the DED and FED phases of project development.

Preparation of the BA must begin within 90 days receipt of a species list and an additional 90 days allows for receipt of a Biological Opinion (BO) from the Service(s) and preparation of the FED by the District Biologist. Species list generated prior to the DED help support the initial effects determinations, which should also be current. An updated species list may be necessary to begin consultation if the species list generated prior to the DED is older than 180 days. If Section 7 consultation is complete, but the FED is delayed, the District Biologist may need to verify or update the species list if it is older than 180 days prior to finalizing the FED. A species list also includes designated critical habitat within the project area; therefore, noting any designated critical habitat updates is also important.

Updates or verifications can be completed in the following ways:

- Request a new list or verify an existing list in writing (informally/formally) from the Service(s).
- Species lists generated from the Service(s) Field Office websites, if available.

Templates for written species list requests can be found on the [Caltrans Division of Environmental Analysis' Endangered Species Coordination](#) website. The [Arcata](#) and [Sacramento](#) USFWS websites provide lists of candidate, proposed, threatened, and endangered species for particular geographic areas.

Keeping up with current species list will result in reduced project delays and will assure that the District Biologist is up to date with species and critical habitat revisions, listings, and de-listings. For additional information please refer to the Memorandum entitled "[Clarification Regarding Federal Endangered Species List Validity.](#)"

4-2.3 Clarification of Local Agency, Consultant, and Caltrans Roles

In light of the involvement of Local Agencies and Consultants in the analysis and preparation of technical documents, it is important to understand the District Biologists role, as well as roles of Local Agencies and Consultants.

Local agencies and Consultants may generate a list of species present in the project area and submit the information to the District Biologist for review and transmission to the Service(s) for concurrence, but may not submit the list to the Service(s) on behalf of Caltrans. Local Agencies and Consultants cannot make any project decisions, such as project modifications or alternatives to avoid effects on behalf of Caltrans, as assigned under NEPA Delegation; this is part of the informal consultation process ([Appendix C](#)) that occurs between Federal agencies.

Local Agencies or Consultants may provide biological information to Caltrans through Technical Assistance with the Service(s), such as their expertise, the species life history, effects determinations, alternative analysis, ideas for avoidance and minimization, protocols, along with their support, information, and ideas ([Appendix C](#)).

All documentation must be submitted for [QA/QC per Caltrans standards](#) (section 4-11). Caltrans must finalize all technical documents prior to submittal to the Service(s) for consultation. Please refer to [Appendix C](#) for additional information on the roles and responsibilities of the District Biologist, Local Agency, and Consultant.

4-2.4. Evaluate the Proposed Project – Information Gathering

The preliminary project evaluation should be performed early in the project development process so it can be used in the selection of alternatives to be studied in the environmental document. The District Biologist must develop background information for all biological resources that have a potential of being affected by the proposed project.

Important sources of general biological information include species lists and designated critical habitat information obtained from the [Service\(s\) websites](#), [National Wetlands Inventory Maps](#) compiled by the USFWS, the [Department of Fish and Game](#) (DFG), environmental documents for nearby projects, and interviews with individuals who are familiar with the biological resources of the project area.

Published reports such as the most recent edition of the California Native Plant Society's [Inventory of Rare and Endangered Vascular Plants of California](#) should be consulted for information on the distribution and habitat requirements of sensitive plant species. The District Biologist should also contact local agency and academic personnel who may be experts on the biota of the study area. These experts may be able to provide additional, unpublished information regarding the distribution and importance of resources within the project area. A windshield survey or site visit can then be conducted to acquire existing information about species distribution, occurrence, and ecology. Please refer to [Appendix D](#) and [Appendix F](#) for [links to biological resource information](#) and [Caltrans guidance](#).

The District Biologist must develop background information for Federal and State special status species that have the potential of being affected by the proposed project. When a species is a concern to the Service(s) and DFG, the District Biologist will consult with both agencies simultaneously, including having both agencies present at the same meeting.

The District Biologist should also rely on existing information and comments received during the scoping process to develop a list of special status species and habitats that may be present in the project area. Information obtained from the most recent records of the California Natural Diversity Data Base (CNDDDB) should be reviewed for the USGS quadrangle on which the project occurs and for adjacent quadrangles as habitat conditions and regional species distribution dictate. Refer to section 4-3.1 for information on determining the biological study area (BSA) limits.

4-2.5 Site Visit

The initial site visit assists in determining the types and level of field studies potentially required. Ideally, the site visit should be conducted with the PDT, or with someone who is very familiar with the project. The District Biologist should determine and document topography, vegetation, stream habitat conditions, riparian corridor locations, existing levels of disturbance, present land use, historical and present species use, and the presence of designated critical habitat.

The District Biologist determines what locations are important habitat features in relation to the proposed project and determines if there are effects to listed species. The site visit also provides opportunity to identify suitable habitat presence and possible minimization measures that can be implemented to limit effects.

Remember that there are two laws that must be addressed in the analysis of special status species and habitat; the Federal law (FESA) and the State law (CESA); therefore, during the site visit the District Biologist should also note any State listed species, rare species, and sensitive plants and/or special habitats. State only listed species information will not be discussed in the BA, since the BA focuses only on those studies and effects analyses associated with federally listed, proposed, threatened and endangered species, (and possibly candidate species) that may be affected by the action. The information gathered regarding State only listed species may be necessary for the CESA analysis (refer to section 4-10 for additional information on CESA procedures).

For Local Assistance projects, the District Biologist attends field reviews with the Local Agency and/or their qualified consultant to provide guidance and determine the type of biological study necessary.

4-3 DRAFT ENVIRONMENTAL DOCUMENT (DED): PROJECT APPROVAL ENVIRONMENTAL DOCUMENT (PAED) PHASE

The PAED Phase of project development includes the [Draft Environmental Document](#) and the [Final Environmental Document](#) phases. During the PAED Phase, the District Biologist must conduct focused field studies, determine project effects to species and their habitats, support findings to be made in the BA (if necessary), and develop mitigation plans (if necessary). The District Biologist should ensure they enter and constantly update the [STEVE](#) with all pertinent fields for tracking Section 7 Consultations with the Service(s).

After the initial windshield survey or site visit, the District Biologist will review project documents such as the PID and PEAR to revisit the cost, schedule, scope, and assumptions made in the project initiation document. This is especially important where new species have been listed, regulations have changed, or seasonal constraints apply.

The District Biologist must refine the list of resources generated during the initial review to those that have the potential of being affected by the proposed action. The District Biologist can then make recommendations on the studies required to assess the effects. For projects with minimal effects on biological resources, the District Biologist may be able to conclude the field study after the initial site visit.

For Local Assistance projects, the District Biologist would prepare a No Effect memo, or direct the Local Agency and/or their qualified consultant to prepare an NES or NES (MI) and fully document the determination of No Effect for approval by the District Biologist.

The District Biologist must carefully focus the scope and extent of biological field studies prior to conducting field investigations. This is necessary to insure that studies address resources of concern that may be affected by the project while at the same time avoiding lengthy discussions of the local or regional biota. Biological resources addressed will be limited to those that are pertinent to the project area and can reasonably be expected to be affected by the project under study. In most cases, substantive resource issues will have been identified during the project scoping process before initiating biological field studies. From a project management standpoint, this step also provides needed information to schedule field work, allocate survey efforts within the BSA, and develop mitigation plans. Please refer to and [Appendix F](#) for a list of common biological resources.

Some projects may require permits or agreements. The groundwork for these documents should be developed during the initial stages of the project development. Caltrans and the appropriate resource agency should reach an agreement on the requirements to obtain those permits or agreements. These conditions can then be incorporated into the environmental document and become an integral part of the project.

Local Agencies are responsible for obtaining their own permits. Caltrans requests copies to be submitted to the District Local Assistance Engineer (DLAE) when received by the Local Agency.

4-3.1 Determining the Biological Study Area (BSA) Limits

The limits of the BSA are determined in coordination with the PDT. The BSA refers to the area directly and indirectly affected by the proposed project and its interdependent and interrelated actions. This area

will usually be larger than the project footprint. A 10-mile radius from the project site normally provides a useful frame of reference for developing a list of special status species to be considered during project studies; however, this will not be adequate in all cases. Typically, the District Biologist should consider all species whose range includes the project site and whose life requirements may be met by the habitat types that are present within the survey area. The BSA refers to all areas to be affected by the action; not merely the immediate area involved in the action.

To determine your BSA, mark the project footprint on a topography map and/or an aerial map. Identify the range of effects such as:

1. Ground disturbance
2. Changes in water quality and quantity (both surface and underground water)
3. Air quality
4. Lighting effects
5. Noise disturbance
6. Staging and disposal areas

Draw a line around all of the affected areas; this is the BSA limits.

For Local Assistance projects, the District Biologist works closely with the Local Agency and/or their consultant to determine the BSA limits. Final approval lies with the District Biologist.

4-3.2 Conduct Required Studies

Once the District Biologist is aware that special status species are, or may be present in the BSA, the District Biologist must initiate a biological field study to determine any effects that the proposed project may have on species or their habitat. This initial effort is to determine the actual presence or absence of a species and habitat in the BSA. If listed species or designated critical habitats are identified in the BSA, the project effect(s) must be determined. This level of study must be sufficient to determine the type and extent of the effects a project will have on special status species and habitats.

Biological field surveys are also conducted to obtain information needed to determine the projects long-term, short-term, and cumulative effects. Prior to collecting biological data, the District Biologist formulates questions and issues that need to be investigated during the field surveys. Pertinent questions may include:

- How rare or abundant are the resources in the region?
- How will the project affect the resilience of the resource?
- Are there invasive species currently in the BSA and will the project promote the spread of invasive species?
- What is the importance of the effected resources on a local or regional scale?
- What will the species exposure from the project be?
- What will the response be?

Given the variety and number of wildlife species and types of habitats found in California, it is impossible to present all of the techniques for surveying each species and type of habitat. For more detailed information on field survey methods, refer to [Volume 3, Chapter 2, section 2-4 of the NES](#), which provides information on mapping procedures, plant survey techniques, wildlife survey techniques, as well as evaluating effects and significance. Also refer to [Appendix D](#) and [Appendix F](#) for links to additional information on biological resources.

4-3.3 Inferring Presence

For some species, such as the kangaroo rat, if suitable habitat features or prey species are present in the BSA, the presence of listed species must be inferred. A [document template](#) was released for inferring presence of federally listed species based on the best available scientific evidence. There must be a supportable and reasonable expectation that a species is present in the BSA and will be affected by the work. For additional information on inferring presence please refer to section 4-5.3.

4-3.4 Document Findings in the NES and Determine the Need for Biological Assessment (BA)

The DED is prepared simultaneously with the Draft Project Report. Typically, the District Biologist summarizes technical documents related to effects on [biological resources](#) in the [NES or NES \(MI\)](#) for use in the environmental document. This includes the methods and results of studies completed or in progress; identification of effects quantified as appropriate for each biological resource and alternative; identification of proposed mitigation, avoidance, minimization, and compensation measures; and a list of permits and agreements needed, along with any other agency coordination. At the DED stage, the District Biologist should, at a minimum, be able to clearly state No Effect or May Effect determinations related to listed species and/or designated critical habitat.

If during the preliminary evaluation, the District Biologist determines there will be no effects to federally listed species or designated critical habitat, the determination that the action has no effect must be documented in the NES or NES (MI).

If the scoping indicates potential effects to listed or proposed species or designated critical habitat, a species focused BA will be prepared. A BA is required for any major construction activity with a federal nexus or if listed species or designated critical habitat may be present in the action area (50 CFR Ch. IV Section 402.12).

For Local Assistance projects, the District Biologist determines the necessary level of study and directs the Local Agency and/or their qualified staff to prepare the report for the District Biologists approval and processing by Caltrans.

The BA analyzes the potential effects of the project on listed species and designated critical habitat and justifies a particular effect determination for each listed species and designated critical habitat addressed. Refer to the [SER, Forms and Templates](#) for an annotated outline of the BA.

Projects with a federal nexus that require Section 7 Interagency Cooperation with the Service(s) include:

- if the project is on federal land;
- if the project is partially or fully federally funded;
- if the project requires any other type of federal permit ([Appendix E](#)) or approval; and
- if a U.S. Army Corp of Engineers (USACE) permit is required for the project (nationwide or individual permit).

It is important to remember that technical documents such as the BA or NES will become incorporated into the Environmental Document by the environmental generalist. The District Biologist should review the Environmental Document to be sure that FESA terms are consistent with Section 7 language. The Environmental Document should also be reviewed to verify how the technical studies are being incorporated into the Environmental Document during project development. Refer to the [SER, Forms and Templates](#) for templates of environmental documents and biological technical documents.

4-3.5 Preparation of the Biological Assessment (BA)

Once the field studies are complete, a BA must be prepared which clearly states what the probable effects will be from constructing the project as proposed. If the conclusion is that the project may affect listed species or modify designated critical habitat, the BA should be prepared as a working draft.

Because the majority of Caltrans projects have a federal nexus, and listed species are often areas affected by the project, the timely and quality preparation of the BA is critical to meeting the regulatory intent, project schedule, and budget.

The purpose of the BA is to provide determination of the effects on the listed species. For each species evaluated, the BA must arrive at one of the three effects conclusions:

- The action will have *no effect* on the species or designated critical habitat;
The action *may affect, not likely to adversely affect* the species or designated critical habitat; or
- The action *may affect, likely to adversely affect* the species or designated critical habitat.

The District Biologist must also consider the effects the proposed project may have on designated critical habitat. Refer to section 4-4 for additional information on effects determinations.

While the BA is in draft form, the District Biologist and PDT should meet with representatives of the Service(s) and DFG to explore methods of reducing the projects effects. This includes evaluating methods of avoiding the effect, minimizing the effect, or developing appropriate mitigation to off-set the project effects.

The BA would be in preparation during the DED phase and completed just after the preferred alternative is selected. However, with some projects where multiple alternatives with wide-ranging effects are being studied at the DED stage, the District Biologist may not be able to complete the BA until after the alternatives have been narrowed; following the circulation of the DED. In these cases, the assessment of effects for each alternative must be in sufficient detail for an adequate comparison of alternatives. Mitigation should at least be to the conceptual stage before the DED is circulated. Sometimes it is preferable to develop detailed mitigation after alternative selection is completed.

Consultation, Conference, or Technical Assistance must be complete before the FED is approved; mitigation measures must also be described in the FED.

4-3.6 Biological Assessment Report Format

Caltrans has developed a [BA template](#) detailing information that must be included in the BA. The annotated outline includes standard language for particular topics, standard graphics, and tips for analyses. The BA template must be used to facilitate consultation with the Service(s), make effects determinations, and to elaborate on each effect.

4.4 EVALUATION OF EFFECTS

The District Biologist must determine the direct, indirect, interrelated and interdependent, cumulative effects, as well as the anticipated take likely to occur from the proposed project. Effect determinations must be consistent with the type of project in the project description, the biology in species accounts, the habitat status, and the existing environment.

4-4.1 Direct and Indirect Effects

Direct Effects occur at or very close to the time of the action itself. For example, effects associated with clearing, grubbing, excavating, loss of habitat, construction noise disturbance, sedimentation from in water construction, or removal of trees.

Indirect effects are those that are caused by the action and are later in time (after the action is complete) but are still reasonably certain to occur.

Examples of indirect effects from transportation projects may include new roadways or land access. They have the potential for indirect effects to listed species and their habitat, because the proposed action can potentially cause changes in land development. It can be difficult to determine the causal relationship; one approach is to compare the proposed action to the no action alternative (if the action/project was not undertaken).

4-4.2 Interdependent and Interrelated Effects

Interdependent and interrelated actions need to be evaluated for potential direct and indirect effects. According to USFWS, effects of the action under consultation are analyzed together with the effects of other activities that are interrelated to, or interdependent with that action. The analysis of whether other activities are interrelated to, or interdependent with, the proposed action under consultation should be conducted by applying a “but for” test. The District Biologist should ask whether another activity in question would occur but for the proposed action under consultation. If the answer is no, (that the activity would not occur but for the proposed action), then the activity is interrelated or interdependent and should be analyzed with the effects of the action. If the answer is yes, then the activity is not interdependent or interrelated and would not be analyzed with the effects of the action under consultation (USFWS, 2010).

Interdependent actions have no independent utility apart from the proposed action ([50 CFR Section 402-02](#)). Interdependent actions are typically because of the proposed action. Interrelated actions are part of a larger action and depend on the larger action for their justification (50 CFR, Section 402-02). Interrelated actions are typically associated with the proposed action.

4-4.3 Cumulative Effects

Cumulative effects are defined differently under FESA, Section 7, than under the National Environmental Policy Act (NEPA). Section 7 regulations require the District Biologist to provide an analysis of cumulative effects when requesting initiation of formal consultation. The Section 7 definition of cumulative effects state that they are those effects of future State or private activities not involving Federal activities that are reasonably certain to occur within the action area that is subject to consultation with the Service(s).

A cumulative effect is defined in the NEPA regulations as the effect on the environment which results from the incremental effects of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person who undertakes such other actions. Cumulative effects can result from individually minor, yet collectively significant actions, taking place over a period of time.

Cumulative effects may include the effects of natural processes and events. Accordingly, there may be different cumulative effects on different environmental resources. The premise is that effects can

accumulate to become more than the sum of their parts; that there are thresholds which, once crossed, cause incremental effects to be greater than a linear extrapolation would predict.

For example, the marginal effect on the existing transportation system of adding a lane may be a small effect, but if traffic is increased, the small effect of adding one lane could sum to a much larger effect. The increase in traffic and wider lanes may prevent species from using an existing crossing corridor.

4-4.4 Critical Habitat

The District Biologist must also consider the effects the proposed project may have on designated critical habitat. Designated critical habitat is habitat that has been federally designated for specific species through the FESA listing process. Designated critical habitat includes geographic areas on which are found those physical and biological features essential to the conservation of the species and which may require special management considerations or protection (USFWS, 2011). Critical habitat may include areas not occupied by the species at the time of listing but that are essential to the conservation of the species. Designated critical habitat only applies to Federal actions under Section 7; it does not apply to non-Federal activities.

To determine potential for designated critical habitats to be exposed to project effects, the District Biologist must examine whether the project effects will extend into designated critical habitat areas and/or will affect any primary constituent elements (PCE) of these habitat areas. PCE's are "those physical and biological features of a landscape that a species needs to survive and reproduce (USFWS, 2011). For example, cover or shelter, sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance."

4-4.5 Incidental Take

The potential for the proposed project to incidentally take a listed species should be analyzed in detail. A take analysis should quantify the number of individuals or the amount of a species habitat (occupied or designated critical habitat) likely to be lost as a result of the proposed project. The terms and conditions of the incidental take statement (ITS) stipulate the number of individuals of a species that may be taken. The ITS is issued to the District Biologist in the form of a BO received from the Service(s).

Take provisions for *proposed* species or *proposed* critical habitat are discussed with the Service(s) through a conference. Conferences are used for Caltrans actions likely to affect proposed species or adversely modify proposed critical habitat. Caltrans prepares a Conference Report and receives a Conference Notice. Conferences must be converted to a formal consultation, culminating in issuance of a BO, if the species is listed during the project's life, including during construction.

The need to consult with the Service(s) for listed plants is similar to the process for listed animal species. The evaluations of the effects to listed plants from a proposed action are analyzed and included in the BA prepared by the District Biologist and in the BO received from the Service; however, plants are not defined or described by the take definition. Refer to section 4-9 for additional information on plants and FESA.

4-4.6 Conclusion of Effects Analysis

No Effect (NE) Determination

The NE determination is only appropriate if the proposed action will have no effect, including indirect, direct, interrelated, and interdependent effects on the species or designated critical habitat. If during the preliminary evaluation, the District Biologist determines there will be no effects to federally listed species; their findings are documented in the NES or NES (MI) and the Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS).

If the project is determined to have no effect on all listed species under NMFS jurisdiction, but may affect one or more listed species under USFWS jurisdiction, there would be no necessary consultation with NMFS; however, preparation of a BA would be necessary for the USFWS listed species.

An example of a NE could be the following: the District Biologist contacts the USFWS to request information on listed species. The USFWS provides a species list containing 3 plants, 1 fish, and 1 butterfly located in the BSA. The proposed project would be constructed at an upland site, on clay soils. The 3 plants are found only on sandy soils. The butterfly's habitat is one of the plants on sandy soil. The nearest sandy soils are 10 miles from the proposed project. The fish is in a stream 5 miles from the proposed project.

There would be no effects from the project, either direct or indirect, because no construction is proposed in listed species habitat or in an area that may affect listed species. In addition, the District Biologist has charted a route for heavy equipment moving onto the construction site that avoids listed species habitat.

May Affect, Not Likely to Adversely Affect (NLAA)

If there are direct or indirect effects from the proposed project and these effects are expected to be discountable, insignificant, or completely beneficial, the appropriate conclusion would be NLAA for listed species. Insignificant indicates that the effect from the proposed action would not reach a level at which take occurs or destruction or adverse modification of designated critical habitat. Discountable indicates that it is extremely unlikely effects would occur.

For example, the District Biologist contacts the USFWS to request information on listed species. USFWS provides a species list containing 2 birds and 1 fish. The proposed project would be constructed at an upland site, 200 yards from the stream (fish habitat) and adjoining riparian vegetation (bird habitat). The migratory birds use the riparian vegetation to nest between April 15 and August 15. The uplands are highly erodible soils. The District Biologist agrees not to construct during the nesting season. The District Biologist flags the riparian vegetation to indicate an avoidance zone and installs silt fencing between the riparian vegetation and the construction site. The District Biologist states that he/she will plant the disturbed soils surrounding the project with native vegetation after construction. The District Biologist also agrees to monitor the vegetation planted for 3 years to assure that it establishes sufficiently to prevent any additional erosion in the project area caused by construction.

The conclusion is that although the District Biologist is working in very close proximity to listed species habitat, the action is not likely to adversely affect listed species because the District Biologist has incorporated sufficient avoidance and other mitigation measures into the project so that any effects to listed species would be discountable. The District Biologist prepares a BA that includes a complete description of the project, all proposed avoidance and other mitigation measures, and the resulting effects of the project on the listed species. The BA is sent to the USFWS to request concurrence that the project is not likely to adversely affect (NLAA) listed species.

If an effect determination is a beneficial effect, it is not necessarily considered a No Effect (NE) determination, but could be considered an NLAA. For example; Caltrans could be replacing a culvert that had previously blocked passage of salmonids. Flow would be diverted around the project site during construction to minimize sediment related effects to downstream areas. There may be short-term effects associated with construction of the new culvert; however, once flows return to normal, the installation of the new culvert will have beneficial effects because access to suitable spawning and rearing habitat is now available which was not previously accessible.

May Affect, Likely to Adversely Affect (LAA)

If an adverse effect on a listed species may occur as a direct or indirect result of a proposed action (including interrelated and interdependent actions), and these effects are not discountable, insignificant, or beneficial, the appropriate conclusion or effect determination for the proposed action is a LAA. If the overall effect of the proposed action is beneficial to the listed species or its designated critical habitat, but is also likely to cause adverse effects, even in the short term, the proposed action would still be considered LAA. If incidental take is anticipated to occur as a result of the proposed action, a LAA determination is made. LAA determinations for listed species require formal consultation with the Service(s). An example of where an LAA determination would be applicable is if the proposed action would clear vegetation in the BSA which is known habitat for listed species.

For example, the District Biologist contacts the USFWS to request information on listed species. The USFWS provides a species list containing 10 birds. The proposed project would be constructed at an upland site within a significant migratory bird corridor that is utilized by the 10 listed birds. Construction will permanently alter the character of the corridor and will likely cause take of listed birds every year during the migration periods. In this type of scenario, formal consultation will be required. The District Biologist prepares a BA to submit to the USFWS to accompany their request to initiate formal consultation because the project is likely to cause take of listed birds every year during their migration periods.

4-4.7 Processing of the Biological Assessment

The District Biologist, along with the PDT, may initiate technical assistance, conference, informal, or formal consultation with the Service(s), depending upon the level of effects the proposed project is expected to have upon listed species or designated critical habitats. The BA process depends on the environmental document type and the species status; click on the table below for the appropriate consultation effort.

Biological Assessment Determination and Documentation	
SRV Volume 3, Ch. 4.7	Flow
Effect Determination:	USFWS/DFW
EH (except construction activities)	Consultation with Service(s) required
Listed species and designated critical habitat may affect determination (LAA)	Consultation with Service(s) required
Listed species unlikely to adversely affect (NLAA)	Incidental Consultation with Service(s) required Consensus as to the taking by the Service(s) is required
No Effect (NE)	Consultation with Service(s) required
Proposed species, may affect:	Consultation with Service(s) required
Proposed species, unlikely to adversely affect or no effect:	Consensus often listed
Candidate species of concern, may affect:	Technical Assistance
Candidate species of concern, unlikely:	Consensus or document, depending on the
CF/DFW/DFW	USFWS/DFW
Listed or proposed species, no effect:	Consensus or document, depending on the
If species list was requested from Service(s) no effect:	Notify Service(s) of our efforts to clear the
All others:	None or EH

It is the District Biologists responsibility to make effect determinations (and follow the [QA/QC approval process](#)) for a project which would trigger the requirement to consult with the Service(s); Caltrans also assumes the risk of making an erroneous decision. For Local Assistance projects, Local Agencies and/or their consultants are not allowed to make effect determinations.

The BA should be submitted to the appropriate Service depending on the species that are addressed. Caltrans, acting as the Federal lead agency under NEPA Delegation, may submit a BA for formal consultation. For formal consultation, the Service(s) review the BA and may concur with the determinations made by the District Biologist. If the Service(s) concur in writing, then no further consultation is needed. The Service(s) may also request additional information before providing concurrence with the determination; the District Biologist should respond to such requests.

4-4.8 Technical Assistance

Technical Assistance is used for the information gathering phase and scoping in the project development process. Technical Assistance may take a variety of forms; it may include the species list provided by the Service(s), information on listed, proposed, and candidate species, exchange of information concerning species, the Service(s) practices, methods, and protocols, and names of contacts having information on other sensitive species or State listed species.

Technical Assistance is informal; however, it should be taken as seriously as if the species were listed. The Service(s) Technical Assistance also includes recommendations for studies, persons to contact, and other information for listed species.

4-4.9 Conference, 50 CFR, Part 402.10

Conferences are required for Caltrans projects likely to jeopardize the continued existence of *proposed* species or adversely modify *proposed* critical habitat. Caltrans may request a formal conference for a project warranting an effect determination of Likely to Adversely Affect (LAA) for proposed species or critical habitat. A LAA effect determination is not the same as jeopardy or adverse modification. Informal conferences also may be requested by the District Biologist if a listing is imminent and the project BA reaches a conditional effect determination of NLAA for that species. The District Biologist can request a conference in the BA transmittal or consultation initiation letter for projects that address proposed species and proposed critical habitats in the BA.

4-4.10 Informal Consultation, 50 CFR, Part 402.13

Informal consultation ([Appendix B](#)) is an optional process that is designed to help determine whether formal consultation is needed. All conversations and correspondence between the District Biologist and the Service(s), including a request for a species list, is considered informal consultation. This period is used to understand potential effects of actions and to collaborate with the Service(s) on measures to avoid and minimize effects to listed resources and to reduce the need for formal consultation. Caltrans may voluntarily modify the project description as appropriate based on this informal consultation.

Initiation of informal consultation must be requested in writing by the District Biologist and/or their managers. The request must include project information and an analysis of effects potentially resulting from the proposed project.

Informal Consultation can be used to assist the Service(s) in determining if formal or informal consultation is required for review of a project's potential effects on listed species or designated critical habitat. Informal Consultation can also be used by the District Biologist to request the Service(s) concurrence with a determination of No Effect (NE) or not likely to adversely affect (NLAA). This process involves submittal of a BA to the Service(s) for review.

If the District Biologist, along with the PDT, determines that a project is NLAA listed species or critical habitat, the District Biologist uses the informal consultation process ([Appendix B](#)) to request the Service(s) concurrence (in agreement with District Biologists determinations). Concurrence by the Service(s) is required for a NLAA determination and the District Biologist is granted a concurrence letter from the Service(s).

4-4.11 Formal Consultation, 50 CFR Part 402.14

If the District Biologist, along with the PDT, determines that the proposed project qualifies as a determination of likely to adversely affect (LAA) for listed species, formal consultation ([Appendix B](#)) and concurrence from the Service(s) is required in the form of a biological opinion (BO). Initiation of formal consultation ([Appendix B](#)) must be requested in writing by the District Biologist, acting on behalf of Caltrans (the Federal action agency).

In order to comply with Section 7 regulations (50 CFR 402.14(c)), to request formal consultation, the District Biologist must produce an initiation package that meets the following six criteria:

1. A description of the action being considered
2. A description of the specific area that may be affected by the action
3. A description of any listed species or critical habitat that may be affected by the action
4. A description of the manner in which the action may affect any listed species or critical habitat and an analysis of any cumulative effects
5. Relevant reports, including EISs, EAs, BAs or other analysis prepared on the proposal
6. Any relevant studies or other information available on the action, the affected listed species, or critical habitat

Through the consultation process ([Appendix B](#)), the Service(s) may recommend modifications to the project to eliminate or reduce adverse effects. If effects can be reduced to an insignificant or discountable level, then consultation can proceed informally.

When formal consultation ([Appendix B](#)) is required, the District Biologist provides the Service(s) with the BA to assist the Service(s) in the preparation of their Biological Opinion (BO). Formal consultation ends with the issuance of a BO provided by the Service(s). The formal consultation process must be completed within 135 days, although extensions are possible.

Within 30 days of receiving a request from the District Biologist for formal consultation, the Service(s) will concur with the District Biologist's BA or notify the District Biologist that they do not concur with the determination made in the BA. The Service(s) will notify the District Biologist in writing that they have enough information to initiate consultation or the Service(s) can request the District Biologist submit additional information (pursuant to 50 CFR 402.14(c) and, if it is a major federal action, 50 CFR 402.12(f)). Within 90 days, the Service(s) complete consultation with the District Biologist. During the 45 day period after consultation, the Service(s) write their final BO.

If the consultation process is not addressed by the Service(s) in the prescribed amount of time for response to the District Biologist prepared BA, Caltrans has agreed upon an extension process. For additional information on the extension process (elevation ladder) refer to section 4-5.3, [Dispute Resolution Process for Section 7 Consultation](#).

4-5 FINAL ENVIRONMENTAL DOCUMENT (FED)

Comments received during the circulation of the DED may substantially alter the course of project studies. Alternatives may be deleted, additional alternatives may arise, the preferred alternative may change, the need for additional studies may be brought to light, and design variations may be suggested. Any of these changes may cause the need for additional biological studies.

During the FED phase of project development the District Biologist should prepare a summary of any revisions, additional studies, species updates, approvals and opinions, as appropriate, to submit for inclusion in the environmental document.

The District Biologist should also ensure they enter and constantly update the [STEVE](#) with all pertinent fields for tracking Section 7 Consultations with the Service(s).

The FED phase must include verification of all information from the RTP stage, PID stage, and Draft Report stage. If necessary, at the FED phase the District Biologist revises the technical studies, finalizes mitigation plans and the BA, and submits it to the Service(s) or other agencies if required. The BO is then obtained from the Service(s). This information is submitted to the environmental generalist for incorporation into the FED. For Local Assistance projects, the BO is transmitted from Caltrans to the Local Agency for inclusion into the FED.

4-5.1 Biological Opinion

The BO is the document that states the opinion of the Service(s) as to whether or not the project is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of habitat.

A BO may include:

- Reasonable and Prudent Alternatives (RPAs): actions recommended to avoid jeopardy or adverse modification
- Incidental Take Statement (ITS): specifies the amount or extent of takings authorized, requires RPAs, and sets forth terms and conditions

The determination of whether or not the project would be likely to jeopardize the species or adversely modify critical habitat, directly, indirectly, or cumulatively, is contained in the BO. If a jeopardy or adverse modification determination is made, the BO must identify any reasonable and prudent alternatives (RPAs) that could allow the project to move forward.

The BO can be a lengthy document and can take a substantial period of time to write. If the proposed action is not likely to jeopardize the continued existence of a species or adversely modify critical habitat, the project may proceed, provided it follows the terms and conditions outlined in the BO issued by the Service(s). The BO may include RPAs or reasonable and prudent measures (RPMs). These alternatives may cause changes in design, cost, scope, or schedule.

RPAs and RPMs include specific actions required to avoid jeopardy or adverse modification to listed species and designated critical habitat. The BO may include terms and conditions that set out the specific methods by which the RPMs are to be accomplished.

Prior to finalizing the BO, the Service(s) will provide a draft terms and conditions to the District Biologist. The District Biologist, along with the PDT, will review the conditions and provide comments back to the Service(s) before they are finalized.

4-5.2 Incidental Take Statement (ITS)

The Section 7 process has provisions for allowing take of listed species. When a proposed Federal action is found to be consistent with Section 7(a)(2) of FESA and that action may incidentally take individuals of

listed species, the Service(s) will issue an incidental take statement (ITS) specifying the effect of any incidental taking of endangered or threatened species. The incidental take statement (ITS) will include the anticipated amount or extent of take on any listed species that may otherwise occur incidental to the project (except for plants). The ITS also includes non discretionary reasonable and prudent measures (RPMs) to be carried out by Caltrans that will minimize the effects of the incidental take. The Service(s) provide Caltrans with specific terms and conditions that, if complied with, will ensure that the taking is incidental to, and not intended as part of Caltrans actions, and is not considered a prohibited taking under FESA.

The District Biologist, in conjunction with the PDT, will review the analysis and the ITS in the Service(s) draft BO to make sure that Caltrans, and/or the Local Agency, can incorporate and meet the proposed measures.

4-5.3 Dispute Resolution Process for Section 7 Consultation: Elevation Ladder

In November, 2006, the FHWA, in cooperation with Caltrans and the USFWS, agreed upon a [Dispute Resolution Process for FESA Section 7 Consultations](#) that have gone beyond the specified Section 7 consultation timelines.

In April, 2009, [Guidance for the Joint Issue Memo for the Dispute Resolution Process for Section 7 Endangered Species Consultation](#) was formalized. This memo provides an [example template](#) for the dispute resolution process. The example template identifies the necessary information needed at a higher level of decision-making and provides a uniform presentation of the issues.

Caltrans' Division of Environmental Analysis may initiate automatic elevations when 60 days has elapsed from the date the initiation request for consultation was received and there is no 30-day insufficiency letter and no indication that the Service has formally started the consultation; or when 135 days plus a 30 day grace period have passed from the date formal consultation was started where no BO has been completed.

The Memorandum entitled "[Tracking Federal Endangered Species Act Consultations and Automatic Elevation Procedures](#)" helps implement the Dispute Resolution Process Flowchart and Elevation Ladder. The Memorandum also includes steps for data input into the [Standard Tracking Exchange Vehicle for Environmental \(STEVE\)](#), ensuring a completed Biological Assessment, timely consultation initiation and automatic elevation procedures with the Service(s).

The STEVE is an internal, Caltrans only, database. STEVE is used for quarterly reporting to the Service(s). The [STEVE](#) is a database workflow tool that allows for movement of documents through the environmental process. The Districts should ensure they are using the STEVE and filling out and constantly updating all pertinent fields for tracking consultations with the Service(s). For additional information on how the STEVE is to be used to track requirements for Section 7 consultations refer to the [STEVE User Guide](#), the [STEVE Launcher](#) (Oct 2011), and the Memorandum, [Tracking Federal Endangered Species Act Consultations and Automatic Elevation Procedures](#).

4-5.4 Local Assistance Process

The [Division of Local Assistance](#) (DLA) is a section of Caltrans that distributes FHWA funding primarily to local agencies for transportation-related projects. The use of FHWA funding provides a federal nexus trigger that subjects the local agency project to the same FESA requirements.

The District Biologist prepares and approves the No Effect memos; however, the Caltrans DLA process is slightly different for other reports in that the Local Agency prepares the project NES (MI), NES, or BA (either in-house or using a qualified consultant). The Local Agency and/or qualified consultant works in close coordination with the Caltrans District Biologist. The District Biologist approves the NES, NES (MI), or BA, and is responsible for initiating consultation with the Services, as necessary. Refer to

contents in this chapter for FESA procedures, the [Local Assistance Procedures Manual, Chapter 6](#), and [Appendix C](#) for additional information on the [Division of Local Assistance](#) procedures and responsibilities.

4-6 DRAFT PLANS, SPECIFICATIONS, AND ESTIMATES (PS&E) PHASE

Throughout development of the draft PS & E, the District Biologist should review and assure that all biological commitments are included in the contract and there is sufficient funding to accomplish those commitments.

During the PS & E phase of project development, supplemental studies may be necessary to confirm results or to address additional issues that arise during design, coordination and/or consultation. The District Biologist must review the draft PS & E for compliance with permits, licenses, agreements, or certifications (PLAC); environmental commitments must be carried forward through to the construction monitoring stage.

The District Biologist must review work window hours to verify they have been correctly identified; assure that environmentally sensitive areas (ESA) are mapped and noted; review the establishment of plantings or specifications; preventative netting or fencing; monitoring specifications; and any other environmental commitments. Please refer to the [SER, Forms and Templates for the PS&E Ready to List Review Tool](#) for a comprehensive checklist.

The District Biologist insures that all biological commitments are recorded in the [Environmental Commitments Record \(ECR\)](#) which becomes part of the Resident Engineer (RE) Pending File. The ECR will also alert the RE that the District Biologist would like to be notified of the pre-construction meeting.

For Local Assistance projects please refer to Chapter 6 of the [Local Assistance Procedures Manual](#).

4-7 CONSTRUCTION AND MONITORING PHASE

During the construction and monitoring phase of project development the District Biologist may be required to participate in pre-construction meetings, pre-construction surveys, and construction monitoring and coordination to ensure compliance with PLAC's.

The District Biologist assists the Resident Engineer (RE) to ensure that all biological requirements and considerations in the contract are understood by, and those necessary preparations are made by, the RE and the Contractor. The Biologist may conduct construction monitoring or oversee a consultant's biological construction monitoring.

For Local Assistance projects please refer to Chapter 6 of the [Local Assistance Procedures Manual](#).

4-8 ESSENTIAL FISH HABITAT

Essential fish habitats, (EFH), are those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. For the purpose of interpreting the definition of essential fish habitat: "Waters" include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; "substrate" includes

sediment, hard bottom, structures underlying the waters, and associated biological communities; "necessary" means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and "spawning, breeding, feeding, or growth to maturity" covers a species' full life cycle. EFH is described by Fishery Management Councils (Council) in amendments to Fishery Management Plans, and is approved by the Secretary of Commerce acting through NMFS (50 CFR 600.10). Only species covered by a Fishery Management Plan need to be considered for EFH coordination. Fishery Management Plans (FMPs) are developed by the Regional [Fishery Management Councils](#) (RFMCs) and implemented by [NMFS](#).

EFH consultations are slightly different from FESA consultations. In previous years, Section 7 consultations and EFH consultations were conducted with NMFS separately. In 2003, NMFS and the FHWA agreed to consolidate Section 7, FESA consultations with EFH consultations in the memorandum entitled, [Essential Fish Habitat Delegation Authority](#). The memorandum identifies Caltrans as the non-Federal representative to consult with NMFS on EFH issues. The District Biologist may conduct concurrent consultations with NMFS.

EFH evaluations must be clearly identified and be distinguished from the Section 7, FESA consultation. This is necessary to clearly distinguish the independent consultation requirements under the [Magnuson-Stevens Fishery Conservation and Management Act](#) (MSFCMA) and FESA, despite the opportunity to conduct both consultations simultaneously.

The [Essential Fish Habitat Delegation Authority](#) memorandum describes also under which circumstances Caltrans will consult with NMFS on EFH by providing various scenarios for when Caltrans will act upon the FHWA's behalf. These scenarios can be very useful to the District Biologist. Mandatory contents of an EFH assessment are identified at 50 CFR 600.920(e)(3).

In September, 2004, Caltrans provided "[Guidance for Combined Essential Fish Habitat and Endangered Species Act Consultation Process](#)" that provides a flowchart for EFH consultations, along with additional guidance for implementation of the combined FESA and EFH consultation processes. The memo is also intended to further clarify the responsibilities of the FHWA and Caltrans.

District Biologists must not overlook EFH issues and requirements. Coordination among Caltrans, the FHWA, and NMFS established a [delegation process](#). EFH will require more information to be added to the BA. The discussion of potential project effects to EFH should be presented in an appendix to the BA. Consultation under FESA should be coordinated with [EFH consultation](#) so that the two processes proceed concurrently to the extent appropriate (considering the species involved). One process should not be subsumed in the other; rather they should proceed in parallel.

There are four essential elements of EFH consultation:

- The District Biologist provides to NMFS notification of an activity that may adversely affect EFH
- The District Biologist provides to NMFS an assessment of effects on EFH with notification
- NMFS provides to the District Biologist EFH conservation recommendations

- The District Biologist provides to NMFS a detailed written response, within 30 days of receiving NMFS EFH conservation recommendations (at least 10 days before final approval of the action for decisions that are rendered in fewer than 30 days).

The trigger for an [EFH consultation](#) is the District Biologist's determination that an action or proposed action, funded, authorized or undertaken by Caltrans may adversely affect EFH. If the District Biologist makes such a determination, then EFH consultation is required.

If the District Biologist determines that an action does not meet the may adversely affect EFH test (the action will not adversely affect EFH), no consultation is required. The District Biologist is not required to contact NMFS about their determination, and should not be encouraged to do so. A no effect on EFH letter is not required or even addressed by either the statute or the EFH regulations. If the District Biologist does send NMFS a no effect on EFH letter, NMFS may elect to respond in writing at their discretion, but a letter of concurrence from NMFS is not required.

If, as a result of the District Biologist's request for concurrence, NMFS becomes aware of potential adverse effects on EFH, NMFS should inform the District Biologist and proceed as described in the following section.

4-8.1 NMFS Adversely Affect Determinations

If NMFS receives information regarding a Caltrans action that may adversely affect EFH, but the District Biologist has not initiated EFH consultation, NMFS may inform the District Biologist of their need to consult with NMFS on actions that may adversely affect EFH, to fulfill their statutory obligations under the Magnuson-Stevens Act.

If the District Biologist has determined that their action will not adversely affect EFH, but NMFS disagrees, NMFS may ask the District Biologist to initiate EFH consultation so that NMFS will have appropriate information (the [EFH Assessment](#)) to develop EFH conservation recommendations. However, the District Biologist is not required to agree to NMFS' request. If NMFS believes that the District Biologist's action would adversely affect EFH, NMFS is required by the [MSFCMA](#) to provide EFH conservation recommendations, regardless of whether the District Biologist has initiated EFH consultation. The District Biologist is required to respond to these recommendations in writing regardless of whether consultation was initiated.

4-8.2 Consultation Initiation and Completion of EFH

An EFH consultation is generally initiated when notification and an EFH Assessment is provided to NMFS for a Caltrans action that may adversely affect EFH, although the District Biologist may (and should be encouraged to) discuss EFH concerns in pre-application planning and other early phases of project development. An EFH consultation generally is concluded when the District Biologist provides a response to NMFS EFH conservation recommendations. However, in the case of Programmatic Consultations and General Concurrences, additional consultation for specific types of activities may be required after the District Biologist responds to EFH conservation recommendations.

Furthermore, the EFH regulations allow NMFS to request further review of the District Biologists decisions that are contrary to NMFS recommendations (50 CFR 600.920(j)(2)). For District Biologists decisions that are made in less than 30 days, the EFH regulations specify that the District Biologists response to NMFS EFH conservation recommendations must be provided to NMFS at least 10 days before final action on the project (50 CFR 600.920(j)(1)), to allow for further review, if required. Although the EFH regulations do not specify this 10-day time period for projects authorized after more than 30 days, in practice a minimum 10-day window should be allowed between the District Biologists response to NMFS and final action on the project. NMFS will then have the time to request further review, if needed.

Finally, supplemental consultation is required if the District Biologist substantially revises a proposed action and adverse effects on EFH are changed, or if new information becomes available that affects the basis for NMFS EFH conservation recommendations (50 CFR 600.920(k)).

For more detailed guidance on EFH consultations, see [NMFS Essential Fish Habitat Consultation Guidance](#). Refer to the [EIS, Annotated Outline](#), for general EFH requirements.

4-8.3 [EFH Consultation Matrix](#)

FESA	Essential Fish Habitat (EFH)	
	No Adverse Effect	Adverse Effect
No Effect	No consultation for FESA or EFH	Consultation on EFH (no consultation for FESA)
Not Likely to Adversely Affect	Informal consultation for FESA (no consultation for EFH)	Informal consultation for FESA and consults on EFH
Likely to Adversely Affect	Formal consultation on FESA (no consultation on EFH per District Biologists determinations)	Formal consultation on FESA and EFH
Document Type	BA for FESA (include documentation determination in section 5.2 of NES following guidance for EFH analysis)	BA for FESA, including the EFH Assessment

4-9 PLANTS AND FESA

The USFWS is responsible for the protection of federally listed plant species. It is prohibited to remove and reduce to possession or maliciously damage or destroy proposed, threatened, and endangered plant species on Federal lands.

The need to consult with the Service for listed plants is similar to the process for listed animal species; the only difference is there is no incidental take for listed plants; thus, the BO does not contain an Incidental Take Statement (ITS).

The District Biologist must evaluate the effects to listed plants and include the analysis in the BA. The Service analyzes the take occurring and effects of the action(s) and considers whether the action is likely to jeopardize the continued existence of federally listed plants. The Service addresses the conclusions in the BO; however, since there are no take prohibitions that apply to plants, there will be no analysis in the BO as to whether take will occur. Even though take of plants may occur, there is no exemption for take of plants under Section 7 (no incidental take provision).

The District Biologist discusses and negotiates with the Service forms of compensation if the loss to federally listed plants is considerable; for example, protection of another area where the listed plant is located. It is also important to remember that some plants are fully protected under CESA and must be fully mitigated. Refer to section .4-10.12 for additional information on CESA and plants.

FESA protection afforded to plants depends on its status. FESA prohibitions may be found in Section 4 (d), Section 9 (a)(2), 50 CFR 17.61, and 50 CFR 17.71 and are outlined as follows:

For federally listed threatened plants it is unlawful to:

1. Import or export (into, out of, or through the U.S.)
2. Remove and reduce to possession from Federal property
3. Engage in interstate or foreign commerce

For federally listed endangered plants it is unlawful to:

1. Import or export (into, out of, or through the U.S.)
2. Remove and reduce to possession from Federal property
3. Engage in interstate or foreign commerce
4. Maliciously damage or destroy on Federal property
5. Remove, cut, dig up, damage, or destroy on private property in violation of any law or regulation of any state including state criminal trespass law

Permits are available to allow the District Biologist to carry out prohibited activities. For *threatened* plants, the activity may be for scientific purposes, the enhancement of propagation or survival of the species, economic hardship, botanical or horticultural exhibition, education or other activities consistent with the purposes and policy of FESA. For *endangered* plants, permits may be issued for scientific purposes, enhancement of propagation or survival of the species, or economic hardship.

Information about plant resources is available from many sources. Some of the most common sources of biological information concerning plants are provided in [Appendix F](#).

4-10 CALIFORNIA ENDANGERED SPECIES ACT PROCESS

This section will review the CESA listing process, species categories, take prohibition and authorization; the contents of an incidental take permit application, consistency determinations, scientific collecting permits, mitigation plans and activities, and how the take prohibition applies to plants.

All species may be taken for scientific purposes but not all may be taken for educational, non-commercial propagation, or management purposes. This is determined by whether a species is classified as a fully protected species, candidate, threatened, or endangered species, species of special concern, a standard exception species, an endangered or rare plant species, or other native species. Refer to the table below for definitions of species categories used in permitting the take of nongame animals and plants.

Species Category	Species Category Definition
Fully Protected	Includes species of fish, amphibians, reptiles, birds, and mammals listed as Fully Protected by the State Legislature (see Fish and Game Code, Sections 3511, 4700, 5050, and 5515).
Threatened, Endangered, or Candidate Species	Includes all species listed by the California Fish and Game Commission (see Title 14 CCR, Section 670.5), and by the Federal government under FESA.
Species of Special Concern	Includes fish, amphibians, reptiles, birds, and mammals that DFG has determined are potentially at risk to become threatened or endangered.
Standard Exception Animals	Includes species included in the three above categories, and bird nests and eggs, raptors, bats, carnivores, game animals, and other specially protected birds and mammals. The back of the application for an SCP has a list of these species.
Other Native Animals	Includes the other animals not included in the sections above.
Endangered and Rare Plants	Includes all plants listed by the Fish and Game Commission (see Title 14 CCR, Section 670.2)

4-10.1 California Endangered Species Act (CESA) Procedures

[CESA](#) states that all native species of fishes, amphibians, reptiles, birds, mammals, invertebrates, and plants, and their habitats, threatened with extinction and those experiencing a significant decline which, if not halted, would lead to a threatened or endangered designation, will be protected or preserved.

CESA mandates that State agencies should not approve projects that would jeopardize the continued existence of these threatened or endangered species if reasonable and prudent alternatives are available that would avoid jeopardy (Fish and Game Code 2050 *et seq.*).

DFG regulates activities related to fish, wildlife, and plants in California and is responsible for administering CESA. CESA emphasizes early coordination to avoid potential affects to State listed species and to develop appropriate mitigation planning to offset project caused losses of listed species. However, if take of a State Listed species is unavoidable, an application pursuant to F&G Code Section 2081 is prepared and submitted by the District Biologist. Refer to section 4-10.5 below for additional information on Section 2081.

Unlike FESA, there are no State agency consultation procedures under CESA. For projects that affect both a State and federally listed species, compliance with FESA will satisfy CESA if DFG determines that the Federal incidental take authorization is "consistent" with CESA under F&G Code Section 2080.1. Refer to section 4-10.4 for additional information concerning take.

The State definition of take under CESA does not include critical habitat modification. Unlike FESA, where habitat is protected under the "harm" and "harass" definitions, habitat under CESA may not necessarily be protected. Under CESA habitat removal is prohibited if it is the proximate cause of death to the species.

The effects from taking listed species must be minimized and fully mitigated. Full mitigation means that no net effects to listed species may occur under CESA.

4-10.2 CESA Listing Process

Individuals, organizations, or the DFG can submit petitions to the Fish and Game Commission requesting that a species, subspecies, or variety of plant or animal be added to, deleted from, or changed in status on the State lists of rare, threatened or endangered species.

If the petition is accepted and the species becomes a candidate species, a 12-month review period starts, during which time the candidate species receives the same CESA protection as a listed species. DFG recommends to the Commission whether the species should be listed based on the best scientific information available to DFG. DFG compiles updated lists of state and federally listed species on the agency website.

4-10.3 Prohibition Against Take

[Section 2080 of the California Fish and Game Code](#) prohibits take of any species that the Fish and Game Commission determines to be a threatened or endangered species. Section 2081(b) allows DFG to issue an incidental take permit if certain requirements are met. Take is defined as hunting, pursuing, catching, capturing, or killing, or attempting to hunt, pursue, catch, capture, or kill listed species. Unlike FESA, this definition does not encompass harm, harassment, or habitat modification, but rather includes only acts leading to the death of a listed species.

4-10.4 Incidental Take Authorization and Permit

The California Department of Fish and Game (DFG) has the authority under [Section 2081 of the California Fish and Game Code](#) to issue permits for the take of species listed under CESA (State listed species) if the take is incidental to an otherwise lawful development project; DFG has determined that the effects of the take have been minimized and fully mitigated; and, the take would not jeopardize the continued existence of the species.

The Section 2081 program (14 CCR 783.3) is a certified regulatory program under the California Environmental Quality Act (CEQA); therefore, DFG does not need to prepare a separate CEQA document when approving a Section 2081 permit. DFG will adopt Caltrans CEQA findings.

4-10.5 Incidental Take Permit (ITP), Section 2081(b) and (c)

Sections 2081(b) and (c) of CESA allow DFG to issue an incidental take permit (ITP) for a State listed threatened and endangered species only if specific criteria are met. These criteria are reiterated in Title 14 CCR, Sections 783.4(a) and (b), and are as follows:

1. The authorized take is incidental to an otherwise lawful activity;
2. The impacts of the authorized take are minimized and fully mitigated;
3. The measures required to minimize and fully mitigate the impacts of the authorized take:
 - a. are roughly proportional in extent to the impact of the taking on the species,
 - b. maintain the applicant's objectives to the greatest extent possible, and
 - c. are capable of successful implementation;
4. Adequate funding is provided to implement the required minimization and mitigation measures and to monitor compliance with and the effectiveness of the measures; and
5. Issuance of the permit will not jeopardize the continued existence of a State-listed species.

The terms and conditions of the permit will be determined by DFG and must ensure that the issuance criteria in items 1 through 5 above are met. Complete requirements and procedures for CESA ITPs are found in CCR Title 14, Sections 783.0 - 783.8.

The Incidental Take Permit process is normally initiated by the District Biologist contacting the appropriate DFG [Regional Office](#).

DFG states that no Section 2081(b) permit may authorize the take of "fully protected" species and "specified birds" (Fish and Game Code Sections 3505, 3511, 4700, 5050, 5515, and 5517). If a project is planned in an area where a fully protected species or a specified bird occurs, the District Biologist and PDT must design the project to avoid all take.

CESA emphasizes early consultation to avoid potential effects to threatened and endangered species, and to develop appropriate mitigation planning to offset effects to listed species populations and their essential habitats. The District Biologist should coordinate with DFG in developing and preparing the ITP, preparing the CEQA findings, the mitigation and monitoring plan, as well as policy direction and consistency with permitting standards.

4-10.6 Contents: Incidental Take Permit

During the preparation of a [permit application](#), the District Biologist should consult with DFG in order to ensure that the application will meet the requirements of the regulations when it is submitted to them. Applications for permits are submitted to the appropriate DFG Regional Manager.

In addition, since DFG will be a responsible agency for purposes of issuing an ITP where Caltrans is the lead agency for purposes of CEQA compliance, the following must be included in the permit application:

- The name, address, telephone number and contact person of the lead agency.
- A statement as to whether an environmental impact report, negative declaration, mitigated negative declaration, initial study or other document has been prepared or is being considered.
- At the option of the applicant, a notice of preparation, notice of determination, or draft or final environmental document may be attached.

4-10.7 Consistency Determination, Section 2080.1

For projects that affect species that are listed both under the State and Federal acts, the Section 7 consultation has been completed and a Biological Opinion and Incidental Take Statement (ITS) have been obtained from the Service(s). The requirements of CESA can be met if DFG determines that the ITS received from the Service(s) is consistent with CESA. Therefore, when conducting consultations under Section 7 of FESA, you must include DFG in the consultation process ([Appendix B](#)).

Upon receipt of an ITS, the District Biologist notifies the director of DFG, in writing, that an ITS has been issued pursuant to FESA and requests DFG to make a determination as to whether the ITS is consistent with CESA. The District Biologist submits 2 copies of the BO and ITS with the request and sends a copy, with attachment, to the appropriate DFG Regional Manager, since they will be conducting the actual review. Typically, a request for Consistency Determination can be concluded within 30 days of DFG's receipt of the Service(s) BO and request for Consistency Determination.

DFG will publish, in the General Public Interest section of the California Regulatory Notice Register, upon the receipt of that notice. Within 30 days DFG will determine whether the ITS is consistent with CESA. The determination will be published in the General Public Interest section of the California Regulatory Notice Register.

For consultation leading to a State incidental take permit (ITP), this process can take up to 120 day; 30 days to determine that the application for a take permit is complete and 90 days after DFG determines the application is complete to process and issue the permit.

4-10.8 Scientific Collecting Permit

A DFG [Scientific Collection Permit](#) is required to take, collect, capture, mark, or salvage, for scientific, educational, and non-commercial propagation purposes, mammals, birds and their nests and eggs, reptiles, amphibians, fishes, and invertebrates. These activities require a SCP. The take of some animals may also require a Memorandum of Understanding (MOU) or other additional written authorization from the DFG. Take of threatened or endangered species incidental to an otherwise lawful activity requires a [Section 2081\(b\) permit](#). Close coordination with DFG throughout the project development process will be beneficial to the District Biologist.

4-10.9 Mitigation Plans

The mitigation plan should identify measures to avoid and minimize the take of State-listed species and to fully mitigate the effects of that take. These measures can vary from project to project. Some of the measures used in the past include: delineation of construction sites; take avoidance measures tailored to the affected species; preconstruction notification of DFG; employee education programs; reporting procedures when an animal is killed, injured or trapped; compliance inspections and reports; acquisition and transfer of habitat management lands; and associated funding (including money for document processing and for initial protection (fencing, posting, clean-up), and endowments for management of the lands in perpetuity). This list can serve as a partial inventory of measures that may be used to minimize and mitigate take, but these are not mandatory requirements and the list is not inclusive of all potential measures. The District Biologist and the PDT may propose alternative strategies for minimizing and fully mitigating effects. DFG must be able to conclude, however, that the project's effects are fully mitigated and the measures, when taken in aggregate, must meet the full mitigation standard.

Measures to minimize the take of species covered by the permit and to mitigate the effects caused by the take are set forth in one or more attachments to the permit. This attachment generally is a mitigation plan which is prepared and submitted by the District Biologists in coordination with DFG staff. The District Biologist will focus on translating goals and objectives and developing a conceptual mitigation plan, followed by a detailed project proposal.

Refer to the [SER, Volume 3, Chapter 5, Mitigation and Monitoring](#), for additional information on mitigation procedures, along with [DFGs website](#).

4-10.10 Mitigation Activities

Mitigation activities are defined as any biological activities performed in order to compensate for the effects of transportation projects. Ecological restoration is another term often used to describe these actions. Activities implemented to minimize biological effects to species or habitats may also be included. Mitigation activities can vary widely depending on the type of project.

4-10.11 Plants and CESA

State listed threatened and endangered plants are covered under CESA. Thus, effects to State listed plants must be minimized and fully mitigated under CESA just as effects to animals are; however, state listed rare plants may not be covered under CESA.

To align with Federal regulations, CESA created the categories of threatened and endangered species. It converted all rare *animals* into CESA as threatened species, but did not do so for rare *plants*. Thus, under CESA, there are three listing categories for plants in California: rare, threatened, and endangered.

[Section 2080 of the California Fish and Game Code](#) prohibits take of any species that the Fish and Game Commission determines to be a threatened or endangered species. State-listed threatened and endangered plants are to be managed and protected under CESA. DFGs "[Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities](#)" provides protocols to facilitate a consistent and systematic approach to the survey and assessment of special status plant species or natural communities so that reliable information is produced and the potential of locating a special status plant species or natural community is maximized. These protocols may also assist District Biologists to determine when a botanical survey is needed, how field surveys may be conducted, and what information to include in a survey report. [DFG's protocols](#) may help avoid delays caused when inadequate biological information is provided during the environmental review process; assist the District Biologist to make an informed decision regarding direct, indirect, and cumulative effects of a proposed project on special status native plants and their natural communities. The protocols will also assist the District Biologist in meeting the requirements of CEQA for adequate disclosure of effects, as well as conserve public trust resources.

The collection, possession, transplantation or propagation of rare, threatened or endangered plants or manipulation of their habitat requires a Rare, Threatened or Endangered [Plant Collecting Permit](#) or [Plant Research Permit](#). These permits are required for activities conducted on both private and public land. Take of threatened or endangered species incidental to an otherwise lawful activity requires a DFG, Section 2081(b) permit.

4-11 QUALITY CONTROL AND ASSURANCE

All information provided during informal FESA and EFH consultations must be consistent with the content, analysis, and terminology of the BA and EFH templates respectively. The NES and NES-MI templates cannot be used in-lieu of a BA or EFH report for consultation purposes. Refer to the Caltrans [Quality Control and Assurance for Biological Technical Documents](#) for the processing requirements of biological technical documents.

4-12 REFERENCES

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4-14 APPENDICES

Appendix A – Glossary of Terms

Action - all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas. Examples include, but are not limited to: (a) actions intended to conserve listed species or their habitat; (b) the promulgation of regulations; (c) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or (d) actions directly or indirectly causing modifications to the land, water, or air. [50 CFR §402.02]

Action area - all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action. [50 CFR §402.02]

Affect/effect - to affect (a verb) is to bring about a change ("The proposed action is likely to adversely affect piping plovers nesting on the shoreline"). The effect (usually a noun) is the result ("The proposed highway is likely to have the following effects on the Florida scrub jay"). "**Affect**" appears throughout Section 7 regulations and documents in the phrases "may affect" and "likely to adversely affect." "**Effect**" appears throughout Section 7 regulations and documents in the phrases "adverse effects," "beneficial effects," "effects of the action," and "no effect." [Proper grammatical usage]

Anticipated/allowable/authorized - in incidental take statements, the Services determine the amount or extent of incidental take "anticipated" (expected) due to the proposed action or an action modified by reasonable and prudent alternatives. When writing incidental take statements, use only the phrase "anticipated" rather than "allowable" or "authorized," as the Services do not allow or authorize (formally permit) incidental take under Section 7. [Clarification of usage]

Applicant - any person (an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; any State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States) [ESA §3(12)] who requires formal approval or authorization from a Federal agency as a prerequisite to conducting the action. [50 CFR §402.02]

Appreciably diminish the value - to considerably reduce the capability of designated or proposed critical habitat to satisfy requirements essential to both the survival and recovery of a listed species. [Clarification of usage]

Best available scientific and commercial data - to assure the quality of the biological, ecological, and other information used in the implementation of the Act, it is the policy of the Services to: (1) evaluate all scientific and other information used to ensure that it is reliable, credible, and represents the best scientific and commercial data available; (2) gather and impartially evaluate biological, ecological, and other information disputing official positions, decisions, and actions proposed or taken by the Services; (3) document their evaluation of comprehensive, technical information regarding the status and habitat requirements for a species throughout its range, whether it supports or does not support a position being proposed as an official agency position; (4) use primary and original sources of information as the basis for recommendations; (5) retain these sources referenced in the official document as part of the administrative record supporting an action; (6) collect, evaluate, and complete all reviews of biological, ecological, and other relevant information within the schedules established by the Act, appropriate regulations, and applicable policies; and (7) require management-level review of documents developed and drafted by Service biologists to verify and assure the quality of the science used to establish official positions, decisions, and actions taken by the Services during their implementation of the Act. [59 FR 34271 (July 1, 1994)]

Biological assessment - information prepared by, or under the direction of, a Federal agency to determine whether a proposed action is likely to: (1) adversely affect listed species or designated critical habitat; (2) jeopardize the continued existence of species that are proposed for listing; or (3) adversely modify proposed critical habitat. Biological assessments must be prepared for "major construction activities." See 50 CFR §402.02. The outcome of this biological assessment determines whether formal consultation or a conference is necessary. [50 CFR §402.02, 50 CFR §402.12]

Biological opinion - document which includes: (1) the opinion of the Fish and Wildlife

Service or the National Marine Fisheries Service as to whether or not a Federal action is likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of designated critical habitat; (2) a summary of the information on which the opinion is based; and (3) a detailed discussion of the effects of the action on listed species or designated critical habitat. [50 CFR §402.02, 50 CFR §402.14(h)]

Candidate species - plant and animal taxa considered for possible addition to the list of threatened and endangered species. These are taxa for which the Fish and Wildlife Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposal to list, but issuance of a proposed rule is currently precluded by higher priority listing actions. [61 FR 7596-7613 (February 28, 1996)]

Conference - a process of early interagency cooperation involving informal or formal discussions between a Federal agency and the Services pursuant to Section 7(a)(4) of the Act regarding the likely impact of an action on proposed species or proposed critical habitat. Conferences are: (1) required for proposed Federal actions likely to jeopardize proposed species, or destroy or adversely modify proposed critical habitat; (2) designed to help Federal agencies identify and resolve potential conflicts between an action and species conservation early in a project's planning; and (3) designed to develop recommendations to minimize or avoid adverse effects to proposed species or proposed critical habitat. [50 CFR §402.02, 50 CFR §402.10]

Conservation - the terms "conserve," "conserving" and "conservation" mean to use and the use of all methods and procedures which are necessary to bring any threatened or endangered species or to the point at which the measures provided pursuant to [the] Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking. [ESA §3(3)]

Conservation measures - are actions to benefit or promote the recovery of listed species that are included by the Federal agency as an integral part of the proposed action. These actions will be taken by the Federal agency or applicant, and serve to minimize or compensate for, project effects on the species under review. These may include actions taken prior to the initiation of consultation, or actions which the Federal agency or applicant have committed to complete in a biological assessment or similar document.

Conservation recommendations - the Services' non-binding suggestions resulting from formal or informal consultation that: (1) identify discretionary measures a Federal agency can take to minimize or avoid the adverse effects of a proposed action on listed or proposed species, or designated or proposed critical habitat; (2) identify studies, monitoring, or research to develop new information on listed or proposed species, or designated or proposed critical habitat; and (3) include suggestions on how an action agency can assist species conservation as part of their action and in furtherance of their authorities under section 7(a)(1) of the Act. [50 CFR §402.02]

Constituent elements - physical and biological features of designated or proposed critical habitat essential to the conservation of the species, including, but not limited to: (1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and (5) habitats that are protected from

disturbance or are representative of the historic geographic and ecological distributions of a species. [ESA §3(5)(A)(i), 50 CFR §424.12(b)]

Critical habitat - for listed species consists of: (1) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of Section 4 of the Act, on which are found those physical or biological features (constituent elements) (a) essential to the conservation of the species and (b) which may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of Section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. [ESA §3 (5)(A)] Designated critical habitats are described in 50 CFR §17 and 226.

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. [50 CFR §402.02] This definition applies only to Section 7 analyses and should not be confused with the broader use of this term in the National Environmental Policy Act or other environmental laws.

Designated non-Federal representative - the person, agency, or organization designated by the Federal agency as its representative to conduct informal consultation or prepare a biological assessment. The non-Federal representative must be designated by giving written notice to the Director. If a permit or license applicant is involved and is not the designated non-Federal representative, then the applicant and the Federal agency must agree on the choice of the designated non-Federal representative. [50 CFR §402.02, 50 CFR §402.08]

Destruction or adverse modification of critical habitat - a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical. [50 CFR §402.02]

Director - the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration; or the Fish and Wildlife Service Regional Director; or their respective authorized representative. [50 CFR §402.02]

Distinct Population Segment - "population," or "distinct population segment," are terms with specific meaning when used for listing, delisting, and reclassification purposes to describe a discrete vertebrate stock that may be added or deleted from the list of threatened and endangered species. The use of the term "distinct population segment" will be consistent with the Services' population policy. [61 FR 4722-4725 (February 7, 1996)]

Early consultation - a preliminary consultation requested by a Federal agency on behalf of a prospective permit or license applicant prior to the filing of an application for a Federal permit or license. [50 CFR §402.11]

Effects of the action - 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 with that action. These effects are considered along with the environmental baseline and the predicted cumulative effects to determine the overall effects to the species for purposes of preparing a biological opinion on the proposed action. [50 CFR §402.02] The environmental baseline covers past and present impacts of all Federal

actions within the action area. This includes the effects of existing Federal projects that have not yet come in for their Section 7 consultation.

Endangered species - any species which is in danger of extinction throughout all or a significant portion of its range. [ESA §3(6)]

Environmental baseline - the past and present impacts of all Federal, State, or private actions and other human activities in an action area, the anticipated impacts of all proposed Federal projects in an action area that have already undergone formal or early Section 7 consultation, and the impact of State or private actions that are contemporaneous with the consultation in process. [50 CFR §402.02]

USFWS - the U.S. Fish and Wildlife Service.

Federal agency - any department, agency, or instrumentality of the United States. [ESA §3(7)]

Fish or wildlife - any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof. [ESA §3(8)]

Formal consultation - a process between the Services and a Federal agency or applicant that: (1) determines whether a proposed Federal action is likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat; (2) begins with a Federal agency's written request and submittal of a complete initiation package; and (3) concludes with the issuance of a biological opinion and incidental take statement by either of the Services. If a proposed Federal action may affect a listed species or designated critical habitat, formal consultation is required (except when the Services concur, in writing, that a proposed action "is not likely to adversely affect" listed species or designated critical habitat). [50 CFR §402.02, 50 CFR §402.14]

Habitat Conservation Plan - Under Section 10(a)(2)(A) of the Act, a planning document that is a mandatory component of an incidental take permit application, also known as a Conservation Plan.

Incidental take - take of listed fish or wildlife species that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by a Federal agency or applicant. [50 CFR §402.02]

Indirect effects - those effects that are caused by or will result from the proposed action and are later in time, but are still reasonably certain to occur. [50 CFR §402.02]

Informal consultation - an optional process that includes all discussions and correspondence between the Services and a Federal agency or designated non-Federal representative, prior to formal consultation, to determine whether a proposed Federal action may affect listed species or critical habitat. This process allows the Federal agency to utilize the Services' expertise to evaluate the agency's assessment of potential effects or to suggest possible modifications to the proposed action which could avoid potentially adverse effects. If a proposed Federal action may affect a listed species or designated critical habitat, formal consultation is required (except when the Services concur, in writing, that a proposed action "is not likely to adversely affect" listed species or designated critical habitat). [50 CFR §402.02, 50 CFR §402.13]

Interdependent actions - actions having no independent utility apart from the proposed action. [50 CFR §402.02]

Interrelated actions - actions that are part of a larger action and depend on the larger action for their justification. [50 CFR §402.02]

Is likely to adversely affect - the appropriate finding in a biological assessment (or conclusion during informal consultation) if any adverse effect to listed species may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions, and the effect is not: discountable, insignificant, or beneficial (see definition of "is not likely to adversely affect"). In the event the overall effect of the proposed action is beneficial to the listed species, but is also likely to cause some adverse effects, then the proposed action "is likely to adversely affect" the listed species. If incidental take is anticipated to occur as a result of the proposed action, an "is likely to adversely affect" determination should be made. An "is likely to adversely affect" determination requires the initiation of formal Section 7 consultation. [Clarification of usage]

Is likely to jeopardize proposed species/adversely modify proposed critical habitat – the appropriate conclusion when the action agency or the Services identify situations where the proposed action is likely to jeopardize the proposed species or adversely modify the proposed critical habitat. If this conclusion is reached, conference is required. [Clarification of usage]

Is not likely to adversely affect - the appropriate conclusion when effects on listed species are expected to be discountable, insignificant, or completely beneficial. **Beneficial effects** are contemporaneous positive effects without any adverse effects to the species.

Insignificant effects relate to the size of the impact and should never reach the scale where take occurs.

Discountable effects are those extremely unlikely to occur. Based on best judgment, a person would not: (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur. [Clarification of usage]

Jeopardize the continued existence of - to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species. [50 CFR §402.02]

Listed species - any species of fish, wildlife or plant which has been determined to be threatened or endangered under Section 4 of the Act. [50 CFR §402.02]

Major construction activity - a construction project (or other undertaking having similar physical effects) which is a major Federal action significantly affecting the quality of the human environment as referred to in the National Environmental Policy Act (NEPA, 42 U.S.C. 4332(2)(C)). [50 CFR §402.02]

May affect - the appropriate conclusion when a proposed action may pose **any** effects on listed species or designated critical habitat. When the Federal agency proposing the action determines that a "may affect" situation exists, then they must either initiate formal consultation or seek written concurrence from the Services that the action "is not likely to adversely affect" [see definition above] listed species. [Clarification of usage]

Minor change rule - when preparing incidental take statements, the Services must specify reasonable and prudent measures and their implementing terms and conditions to minimize the impacts of incidental take that do not alter the basic design, location, scope, duration, or timing of the action, and that involve only minor changes. [50 CFR §402.14(i)(2)]

NMFS - the National Marine Fisheries Service.

No effect - the appropriate conclusion when the action agency determines its proposed action will not affect a listed species or designated critical habitat. [Clarification of usage]

Occupied critical habitat - critical habitat that contains individuals of the species at the time of the project analysis. A species does not have to occupy critical habitat throughout the year for the habitat to be considered occupied (e.g. migratory birds). Subsequent events affecting the species may result in this habitat becoming unoccupied. [Clarification of usage]

Population - "population," or "distinct population segment," are terms with specific meaning when used for listing, delisting, and reclassification purposes to describe a discrete vertebrate stock that may be added or deleted from the list of threatened and endangered species. The term "population" will be confined to those distinct population segments officially listed, or eligible for listing, consistent with Section 4(a) of the Act and the Services' population policy. [61 FR 4722-4725 (February 7, 1996)]

Preliminary biological opinion - the opinion issued as a result of early consultation. [50 CFR §402.02]

Programmatic consultation - consultation addressing an agency's multiple actions on a program, regional or other basis. [Clarification of usage]

Proposed critical habitat - habitat proposed in the Federal Register to be designated as critical habitat, or habitat proposed to be added to an existing critical habitat designation, under Section 4 of the Act for any listed or proposed species. [50 CFR §402.02]

Proposed species - any species of fish, wildlife or plant that is proposed in the Federal Register to be listed under Section 4 of the Act. [50 CFR §402.02]

Reasonable and prudent alternatives - recommended alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or the destruction or adverse modification of designated critical habitat. [50 CFR §402.02]

Reasonable and prudent measures - actions the Director believes necessary or appropriate to minimize the impacts, i.e., amount or extent, of incidental take. [50 CFR §402.02]

Recovery - improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in Section 4(a)(1) of the Act. [50 CFR §402.02]

Recovery unit - management subsets of the listed species that are created to establish recovery goals or carrying out management actions. To lessen confusion in the context of

Section 7 and other Endangered Species Act activities, a subset of an animal or plant species that needs to be identified for recovery management purposes will be called a "recovery unit" instead of a "population." [Clarification of usage]

Section 4 - the section of the Endangered Species Act of 1973, as amended, outlining procedures and criteria for: (1) identifying and listing threatened and endangered species; (2) identifying, designating, and revising critical habitat; (3) developing and revising recovery plans; and (4) monitoring species removed from the list of threatened or endangered species. [ESA §4]

Section 7 - the section of the Endangered Species Act of 1973, as amended, outlining procedures for interagency cooperation to conserve Federally listed species and designated critical habitats. Section 7(a)(1) requires Federal agencies to use their authorities to further the conservation of listed species. Section 7(a)(2) requires Federal agencies to consult with the Services to ensure that they are not undertaking, funding, permitting, or authorizing actions likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat. Other paragraphs of this section establish the requirement to conduct conferences on proposed species; allow applicants to initiate early consultation; require FWS and NMFS to prepare biological opinions and issue incidental take statements. Section 7 also establishes procedures for seeking exemptions from the requirements of Section 7(a)(2) from the Endangered Species Committee. [ESA §7]

Section 7 consultation - the various Section 7 processes, including both consultation and conference if proposed species are involved. [50 CFR §402]

Section 9 - the section of the Endangered Species Act of 1973, as amended, that prohibits the taking of endangered species of fish and wildlife. Additional prohibitions include: (1) import or export of endangered species or products made from endangered species; (2) interstate or foreign commerce in listed species or their products; and (3) possession of unlawfully taken endangered species. [ESA §9]

Section 10 - the section of the Endangered Species Act of 1973, as amended, that provides exceptions to Section 9 prohibitions. The exceptions most relevant to Section 7 consultations are takings allowed by two kinds of permits issued by the Services: (1) scientific take permits and (2) incidental take permits. The Services can issue permits to take listed species for scientific purposes, or to enhance the propagation or survival of listed species. The Services can also issue permits to take listed species incidental to otherwise legal activity. [ESA §10]

Service(s) - the Fish and Wildlife Service or the National Marine Fisheries Service (or both).

Species - includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. [ESA §3(16)]

Species list – a list of candidate, proposed, threatened, and endangered species in the project area obtained from the Service(s) through written request or from web based searches. (50 CFR 402.12 (e)).

Survival - For determination of jeopardy/adverse modification: the species' persistence as listed or as a recovery unit, beyond the conditions leading to its endangerment, with sufficient resilience to allow for the potential recovery from endangerment. Said another way, survival is the condition in which a species continues to exist into the future while retaining the potential for recovery. This condition is characterized by a species with a sufficient population, represented by all necessary age classes, genetic

heterogeneity, and number of sexually mature individuals producing viable offspring, which exists in an environment providing all requirements for completion of the species' entire life cycle, including reproduction, sustenance, and shelter. [Clarification of usage]

Take - to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct. [ESA §3(19)]

Harm is further defined by FWS to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering.

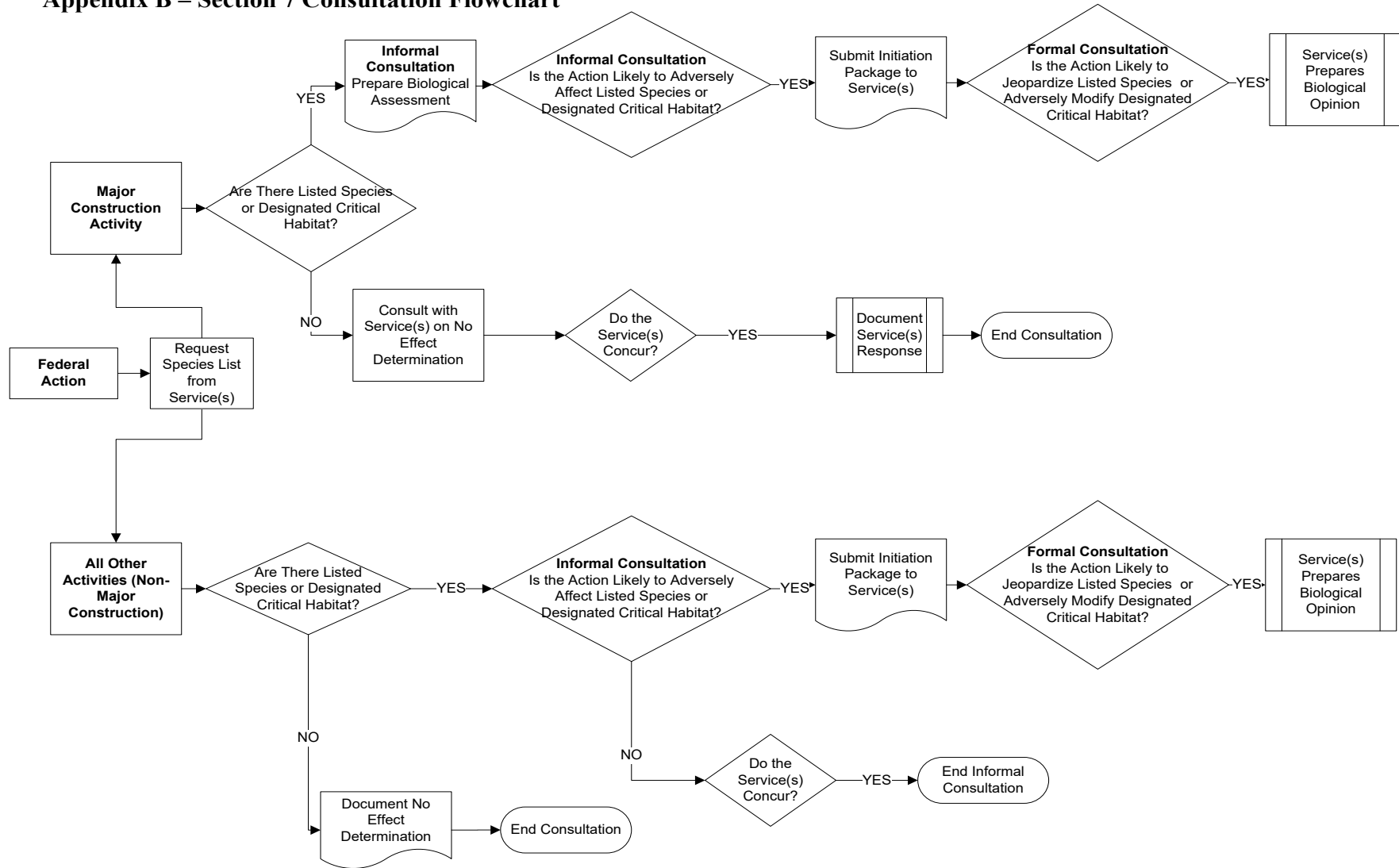
Harass is defined by FWS as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering. [50 CFR §17.3]

Technical assistance from the Service(s) may take a variety of forms; it includes the species list provided by the Service, information on listed, proposed, and candidate species, as well as names of contacts having information on other sensitive species or State listed species.

Threatened species - any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. [ESA §3(20)]

Unoccupied critical habitat - critical habitat not occupied (i.e., not permanently or seasonally occupied) by the listed species at the time of the project analysis. The habitat may be suitable, but the species has been extirpated from this portion of its range. Conversely, critical habitat may have been designated in areas unsuitable for the species, but restorable to suitability with proper management, if the area is necessary to either stabilize the population or assure eventual recovery of a listed species. As recovery proceeds, this formerly unoccupied habitat may become occupied. Some designated, unoccupied habitat may never be occupied by the species, but was designated since it is essential for conserving the species because it maintains factors constituting the species' habitat.

Appendix B – Section 7 Consultation Flowchart



Appendix C – Roles of Caltrans, Local Agency, and Consultant for Local Assistance Projects

Local Agency/Consultant’s Role	District Biologist’s Role
Technical Assistance Scoping Phase (PEAR Phase)	Provide Guidance and Oversight in all Phases of Development of Biological Technical Documents
Expertise	Provide Guidance and Oversight
Species Life History	Provide Guidance and Oversight
Protocols and Methods	Provide Guidance and Oversight
Information to Aid in Species List Generation (cannot request a species list directly from the Service(s); only web-based searches).	Provide Guidance and Oversight
Support, Information, and Ideas	Track and Update STEVE
Technical Services/Support During Consultation/Project Delivery Phase (PA & ED Phase)	Provide Guidance and Oversight in all Phases of Development of Biological Assessment
Expertise	Provide Guidance and Oversight
Species Life History	Provide Guidance and Oversight
Protocols and Methods	Request Species List to Begin Informal Consultation
Support, Information, and Ideas	Provide Guidance and Oversight
Surveys	
Input Related to Determination of Effects/Alternatives	Coordinate and Correspond with Service(s)
Draft BA	Adoption/Development of Caltrans’ Biological Assessment
	Initiate Formal Consultation
	Review Draft Biological Opinion
	Accept Biological Opinion and Incorporate into Final Environmental Document
	Track and Update STEVE
Construction and Monitoring Phase	Provide Guidance and Oversight
Monitor construction activities for compliance with BO	Provide Guidance and Oversight
	Report Any Issues to the Service(s)
Mitigation Phase	Provide Guidance and Oversight
Monitor mitigation measures	Provide Guidance and Oversight
Prepare mitigation reports	Review and Submit Monitoring Reports to the Service(s)
	Track and Update STEVE

NOTE: Only the District Biologist and/or their managers may conduct Section 7 consultations; however, Local Agencies and Consultants, under the direction of the District Biologist, are encouraged to participate. Please refer to [Quality Control and Assurance for Biological Technical Documents](#) for additional information. Please refer to Section 4-5.4 for additional information on the roles and responsibilities of Local Agencies and Consultants.

Appendix D – Biological Resources, Species Lists, and Caltrans Guidance

Along with the CNDDDB and Service(s) website, additional information on biological resources are available. Some of the common sources of biological resources information include the following:

U.S. Fish and Wildlife Service

- [Endangered Species Program](#) provides special status species information
- [Threatened and Endangered Species Database \(TESS\)](#) provides species lists and information
- [Guidelines and Survey Protocols: Sacramento Fish and Wildlife Office](#)
- [Survey Protocols: Ventura Fish and Wildlife Office](#)
- [Endangered Species Home Page](#)
- [Factsheets and News Releases on Threatened and Endangered Species](#)
- [National Wildlife Refuge System](#)
- [Number of Federal Listed Species by State](#)
- [Guidelines for the Fulfillment of Interagency Cooperation Under Section 7 of the Endangered Species Act](#)

National Marine Fisheries Service

- [Listed Pacific Salmon](#)
- [Listed Marine Mammals](#)
- [Listed Marine Turtles](#)
- [Listed Other Marine Species](#)
- [Essential Fish Habitat](#)
- [NMFS EFH Consultations](#)
- [Essential Fish Habitat & Critical Habitat Comparisons](#)
- [Essential Fish Habitat Mapper v2.0](#)
- [Essential Fish Habitat Consultation Guidance](#)
- [Endangered Species Act Salmon Regulations and Permits](#)
- [Cooperative Policy on Information Standards Under FESA](#)
- [Cooperative Policy for the Ecosystem Approach to FESA](#)
- [Cooperative Policy Regarding the Role of State Agencies in FESA](#)
- [Cooperative Policy for Peer Review in FESA Activities](#)
- [Cooperative Policy for Recovery Plan Participation and Implementation Under FESA](#)

Critical Habitat

- [USFWS Critical Habitat Portal](#)
- [NMFS Critical Habitat](#)

- [NMFS Critical Habitat Maps and Data](#)
- [Code of Federal Regulations: 50 CFR 226 - Designated Critical Habitat](#)
- [Geographic Information Systems \(GIS\) Data on Critical Habitat](#)

California Department of Fish and Game (DFG)

- [Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities](#)
- [Survey and Monitoring Protocols and Guidelines](#)
- [California Natural Diversity Data Base \(CNDDDB\): Inventories the status and locations of rare plants and animals in California](#)
- [Wildlife Species Matrix](#)
- [BIOS](#): Biogeographic Information and Observation System online mapping tool
- [VegCAMP](#): Vegetation Classification and Mapping Program
- [CWHR](#): California Wildlife Habitat Relationships
- [GIS](#): Geographic Information Systems services and support
- [California Environmental Resources Evaluation System \(CERES\)](#): Access a variety of electronic data describing California's rich and diverse environments.

Federal Register

- [Federal Register](#)
- [Code of Federal Regulations \(CFR\)](#)

Caltrans Guidance

- [Caltrans BA Template](#)
- [Caltrans EIS Template](#)
- [Environmental Commitments Record](#)
- [General Biological Technical Document Format FAQs](#)
- [Clarification Regarding Federal Endangered Species List Validity](#). Jay Norvell (June 22, 2011)
- [Tracking Federal Endangered Species Act Consultations and Automatic Elevation Procedures](#). Jay Norvell (March 18, 2011)
- [Guidance for the Joint Issue Memo for the Dispute Resolution Process for Section 7 Endangered Species Act Consultation](#). Jay Norvell (April 8, 2009).
- [Dispute Resolution Process with FWS for Section 7](#). (November 21, 2006)
- [Cumulative Impact and Growth-Related, Indirect Impact Analyses Guidance](#). Kelly C Dunlap (October 9, 2007).

- [Joint Guidance FHWA/Caltrans NEPA Consultation/Reevaluation Guidance](#). Jay Norvell, (June 21, 2007).
- [Inferred Presence of Federally Listed Species](#) (FHWA - California Division)
- [Programmatic biological opinion based on the FHWA's minor transportation projects](#). USFWS (December 21, 2004)
- [Guidance for Preparers of Cumulative Impact Analysis](#) Approach and Guidance. (June 30, 2005)
- [Guidance for Preparers of Growth-related, Indirect Impact Analyses](#). (May, 2006)
- [Environmental Commitments Record: Memo](#), (June 10, 2005)
- [Mitigation in Areas with Habitat Conservation Plans](#). FHWA - California Division. (December 3, 2004)
- [Guidance for Combined Essential Fish Habitat and Endangered Species Act Consultation Process](#). (September 20, 2004)
- [Essential Fish Habitat Delegation Authority](#). (June 7, 2004)
- [FHWA Technical Advisory](#) (T-6640.8A). (October 30, 1987)
- [Conducting Endangered Species Act Consultations with Services](#). Michael G. Ritchie (FHWA) (April 24, 2002)
- [Project Initiation Documents and the Preliminary Environmental Analysis Report](#). Kelly C. Dunlap, (July 28, 2011).
- [Preliminary Environmental Analysis Report Handbook](#). Gary R. Winters (December 27, 2001)

Caltrans District Biologists have use of internal [Section 7 Concurrence and Request Letter Templates](#) to help build an administrative record of correspondence related to consultation. These templates may only be used by Caltrans District Biologists due to the State of California, Department of Transportation's, official headers and footers. The internal templates are available on Caltrans Division of Environmental Analysis, Biological Studies and Technical Assistance website. This is not to be confused with Caltrans, Standard Environmental Reference (SER), forms and templates, which are available to all Biologists.

- Request Species List
- Request Species List Follow-up
- 30 Day Concurrence with BA Findings
- Confirming Concurrence with Understanding of Methods/Protocols
- Confirming Understanding of Methods/Protocols
- Section 7 Consultation Initiation Request
- Request Biological Opinion

Appendix E – Federal Regulations Table

The following table may be used as a reference. The table provides a summary of the Federal agencies that regulate activities concerning the Federal Endangered Species Act and responsibilities of District Biologist's.

Regulation	Agency	Responsibility
Federal Endangered Species Act (FESA) (50 CFR Part 402), as amended	U.S. Fish and Wildlife Service (USFWS)	District Biologist consults with USFWS if listed terrestrial species and freshwater aquatic species or habitat is present
Fish and Wildlife Coordination Act (FWCA) (16 USC 661-666), as amended	U.S. Fish and Wildlife Service (USFWS)	District Biologist is required to consult with USFWS/DFG when a proposed activity involving the impoundment, diversion, deepening, control, or modification of a stream or body of water. Agency will prepare reports and recommendations that document project effects on wildlife and identify measures that may be adopted to prevent loss or damage to wildlife resources
Migratory Bird Treaty Act (MBTA) (16 USC 703-711), as amended	U.S. Fish and Wildlife Service (USFWS)	Unlawful to take, import, export, possess, sell, purchase, or barter any migratory bird. A Federal MBTA authorization (permit) is needed to collect birds covered by the MBTA. Applies to feathers, eggs, and nests also. Of particular concern when birds nest on bridges, buildings, signs, and other structures
Bald and Golden Eagle Protection Act (16 USC 668-668d), as amended	U.S. Fish and Wildlife Service (USFWS)	Illegal to take bald or golden eagles. If disturbance will occur, District Biologist must obtain a permit to authorize take of eagles. Applies to feathers, eggs, and nests also. Of particular concern when birds nest on bridges, signs, and buildings
Fishery Conservation and Management Act (Magnuson-Stevens Act) (Public Law 94-265), as	U.S. Fish and Wildlife Service (USFWS)	District Biologist must document and consult with NMFS on activities that may adversely affect essential fish habitat (EFH)

amended		
Noxious Weed Control and Eradication Act of 2004 (7 U.S.C. 2814(a)), as amended	U.S. Fish and Wildlife Service (USFWS)	Section 15 requires Caltrans to develop and establish a management program for control of undesirable plants that are classified under State or Federal law located on Federal lands under Caltrans jurisdiction
Plant Protection Act (PPA) (7 USC 7702, 7 USC 7701 & 7 USC 7701), as amended	U.S. Fish and Wildlife Service (USFWS)	Cannot import, take, possess, or sell any native plant determined to be an endangered native plant or rare native plant
Lacey Act (16 U.S.C. §§ 3371-3378), as amended	U.S. Fish and Wildlife Service (USFWS)	Prohibits trade in wildlife, fish, and plants that have been illegally taken, possessed, transported or sold
National Environmental Policy Act (NEPA) (42 USC 4321 et seq.), as amended	U.S. Fish and Wildlife Service (USFWS)	Cooperating Agency
Federal Endangered Species Act (FESA)	National Marine Fisheries Service (NMFS)	District Biologist consults with NMFS if listed marine species and most anadromous fish are present in project area
Fishery Conservation and Management Act (Magnuson-Stevens Act) (Public Law 94-265), as amended	National Marine Fisheries Service (NMFS)	Requires District Biologist to consult with NMFS on activities that may adversely affect essential fish habitat (EFH)
Anadromous Fish Conservation Act (16 USC 757a-757g; 79 Stat. 1125), as amended	National Marine Fisheries Service (NMFS)	NMFS enters into agreements with states and other non-Federal interests to conserve, develop, and enhance the anadromous fish
Marine Mammal Protection Act (MMPA) (16 USC § 1361 et seq), as amended	National Marine Fisheries Service (NMFS)	Requires District Biologist to apply for an Incidental Harassment Authorization (IHA) if the project could result in take of any marine mammal. Permits that involve listed marine mammals require additional review and processing time under FESA and NEPA

<p>Lacey Act (16 U.S.C. §§ 3371-3378), as amended</p>	<p>National Marine Fisheries Service (NMFS)</p>	<p>Prohibits trade in wildlife, fish, and plants that have been illegally taken, possessed, transported or sold</p>
<p>National Environmental Policy Act (NEPA) (42 USC 4321 et seq.), as amended</p>	<p>National Marine Fisheries Service (NMFS)</p>	<p>Cooperating Agency</p>
<p>Lacey Act (16 U.S.C. §§ 3371-3378), as amended</p>	<p>United States Department of Agriculture (USDA)</p>	<p>Prohibits trade in wildlife, fish, and plants that have been illegally taken, possessed, transported or sold</p>
<p>Noxious Weed Control and Eradication Act of 2004 (7 U.S.C. 2814(a)), as amended</p>	<p>United States Department of Agriculture (USDA)</p>	<p>Section 15 requires Caltrans to develop and establish a management program for control of undesirable plants that are classified under State or Federal law located on Federal lands under Caltrans jurisdiction</p>
<p>Plant Protection Act (PPA) (PUBLIC LAW 106-224, as amended) (part of the Agricultural Risk Protection Act)</p>	<p>United States Department of Agriculture (USDA)</p>	<p>Cannot import, take, possess, or sell any native plant determined to be an endangered native plant or rare native plant</p>

Appendix F - Biological Resources: Plants

[California Department of Fish and Game](#) (DFG)

- [California Natural Diversity Database Resources](#) (CNDDDB) is a program that inventories the status and locations of rare plants and animals in California
- [Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities](#) (11/2009)
- [Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed, Proposed, and Candidate Plants](#) (USFWS, 2000)
- [Fish and Game Code 1900-1913: Native Plant Protection Act](#)
- [Listing Threatened and Endangered Plants](#)
- [Research on Rare, Threatened or Endangered Plants](#)
- [Status of Rare, Threatened, and Endangered Plants and Animals of California 2000-2004](#)
- [Rare Plant Program](#)
- [Biogeographic Information and Observation System - BIOS](#)
- [Vegetation Classification and Mapping Program](#)
- [Endangered, Threatened and Rare Plant Species](#)
- [Special Vascular Plants, Bryophytes, and Lichens](#)
- [Plant and Animal Information](#)
- [Survey Guidelines](#)
- [California Native Plant Society \(CNPS\)](#)
- [Inventory of Rare and Endangered Vascular Plants of California](#)
- [Jepson Interchange](#)
- [A Manual of California Vegetation](#)
- [CalFlora Database, Botanical Resource for California](#)

Plant Permits

- [Scientific Collecting Permit](#)
- [Research Permit Guidelines](#)
- [Research Permit Application](#)

Other Guidance

- [California Desert Native Plants Act](#) (Fish and Game Code 1925 et seq.)
- [Senate Concurrent Resolution No. 17: Oak Woodlands](#)

- [Sudden Oak Death Resolutions](#)

Appendix G – State Regulations Table

The following table may be used as a reference. The table provides a summary of the State agencies that regulate activities concerning the California Endangered Species Act and responsibilities of District Biologist's.

Regulation	Agency	Responsibility
California Endangered Species Act (CESA)	California Department of Fish and Game (DFG)	Section 2080 prohibits District Biologist from take of any threatened or endangered species.
California Endangered Species Act (CESA)	California Department of Fish and Game (DFG)	Section 2080.1 District Biologist must submit the Federal biological opinion/incidental take statement to DFG for a determination as to whether the Federal document is "consistent" with CESA.
California Endangered Species Act (CESA)	California Department of Fish and Game (DFG)	Incidental Take Permit – (Section 2081(b) and (c)) may be issued to the District Biologist to allow take if the take is incidental to otherwise lawful activity, fully mitigated, funded, and will not jeopardize special status species
California Native Plant Protection Act (CNPPA) (Fish and Game Code 1900 et seq.)	California Department of Fish and Game (DFG)	Prohibits the taking of listed plants from the wild and require notification of the DFG at least 10 days in advance of any change in land use. District Biologist is required to conduct botanical inventories and consult with DFG during project planning.
California Desert Native Plant Act (Fish and Game Code 1925 et seq. and Food and Agriculture Code 80001-80006)	California Department of Fish and Game (DFG)	Harvest, transport, sale, or possession of specific native desert plants is prohibited unless Biologist has a valid permit, or wood receipt, and the required tags and seals (applicable only within the Counties of Imperial, Inyo, Kern, Los Angeles, Mono, Riverside, San Bernardino, and San Diego).
Fish and Wildlife Coordination Act (16 USC 661-666)	California Department of Fish and Game (DFG)	District Biologist is required to consult with DFG that document project effects on wildlife. (DFG prepares reports and recommendations to document project effects on wildlife and identify measures that may be

		adopted to prevent loss or damage to wildlife resources).
CEQA	California Department of Fish and Game (DFG)	Commenting authority

Biological Assessment Determination and Documentation

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If the determination is:	Then:
EIS (major construction activity)	USFWS/NMFS
Listed species and designated critical habitat; may affect determination; (LAA)	Consultation with Service(s) required.
Listed species, not likely to adversely affect (NLAA);	Informal Consultation with Service(s) required. Concurrence in the finding by the Service(s) is required
No effect (NE);	Consultation with Service(s) required.
Proposed species, may affect;	Conference with Service(s) required.
Proposed species, not likely to adversely affect or no effect;	Concurrence after listed.
Candidate/species of concern, may affect;	Technical Assistance.
Candidate/species of concern, no effect;	Summarize in document, backup in file.
CE /FONSI	USFWS/NMFS
Listed or proposed species, no effect.	Summarize in document, backup in file.
If species list was requested from Service(s), no effect.	Notify Service(s) of no effect to close file.
All others.	Same as EIS.