

Fact Sheet

Endangered Species Act

The Missouri River Section 7 Consultation

Section 7 of the Endangered Species Act (Act) provides some of the most valuable tools to conserve threatened and endangered species, assist in their recovery and help protect critical habitat. It directs all Federal agencies to determine how to use their existing authorities to further the purposes of the Act to aid in recovering listed species, and to address existing and potential conservation issues.

Section 7(a)(1) directs all Federal agencies to use their existing authorities to conserve threatened and endangered species.

Section 7(a)(2), directs all Federal agencies that permit, fund, or carry out activities must consult with the Fish and Wildlife Service as appropriate, to ensure that its actions will not jeopardize the continued existence of any listed species.

The Missouri River Section 7 Consultation

The Corps of Engineers and the Fish and Wildlife Service have begun a **formal consultation** regarding the Corps' annual operations and related projects on the Missouri River. **Formal consultation** is a mandatory process for proposed projects that may adversely affect listed species. The Corps recently prepared a biological assessment that determined that their operations may affect listed species.

During this consultation, the Corps and the Service will work together to explore ways to protect the Missouri River listed species – interior least tern, piping plover and pallid sturgeon – that will be consistent with the Corps' responsibilities to manage the dams and reservoirs on the Missouri River.

The consultation process will conclude with the Service issuing a biological opinion regarding the current water control plans. The biological opinion will consist of a description of the proposed action, current status of the species, the environmental baseline, effects of the action, cumulative effects, the Service's conclusion of jeopardy or non-jeopardy, conservation measures, and reasonable and prudent alternatives, as appropriate.

The mutual objective of the Corps of Engineers and the Service in this consultation process is to produce a non-jeopardy alternative that addresses the needs of fish and wildlife as well as the people of the Missouri River basin.

What is Jeopardy?

Under the ESA, jeopardy occurs when an action is reasonably expected, directly or indirectly, to diminish a species' numbers, reproduction, or distribution so that the likelihood of survival and recovery in the wild is appreciably reduced.

Reasonable and Prudent Alternatives and Incidental Take

If the Service makes a jeopardy determination, it will also provide reasonable and prudent alternative actions. These alternatives will be developed with input and assistance from the Corps of Engineers. The alternatives must:

- be consistent with the purpose of the proposed project but can include modifications to existing operations
- be consistent with the Corps' legal authority and jurisdiction including their obligations under the Endangered Species Act
- be economically and technically feasible in the Service's opinion, avoid jeopardy

In some cases, an action may result in incidental take of a listed species. When this happens, the Service prepares an incidental take statement for the proposed Federal project. Under most circumstances, the ESA prohibits take, which is defined as harming (includes killing) or harassing a listed species. Incidental take – take that results from a Federal action but is not the purpose of the action – may be allowed when the Service approves it through an incidental take statement. The statement includes the amount or extent of anticipated take due to the Federal action, reasonable and prudent measures to minimize the take, and terms and conditions that must be observed when implementing those measures.

The Next Step

After the Service issues the biological opinion, the Corps will decide how to proceed. If the biological opinion determines adverse effects, the Corps can adopt the reasonable and prudent measures outlined in an incidental take statement and proceed with the project. If the Service makes a jeopardy determination, the Corps has several options:

- implement the reasonable and prudent alternatives;
- modify the proposed project and consult again with the Service;
- apply for an exemption.

To be considered for an exemption, the Federal agency must show to a national committee that they have exhausted all reasonable efforts to develop and consider modifications or alternatives to the proposed action.