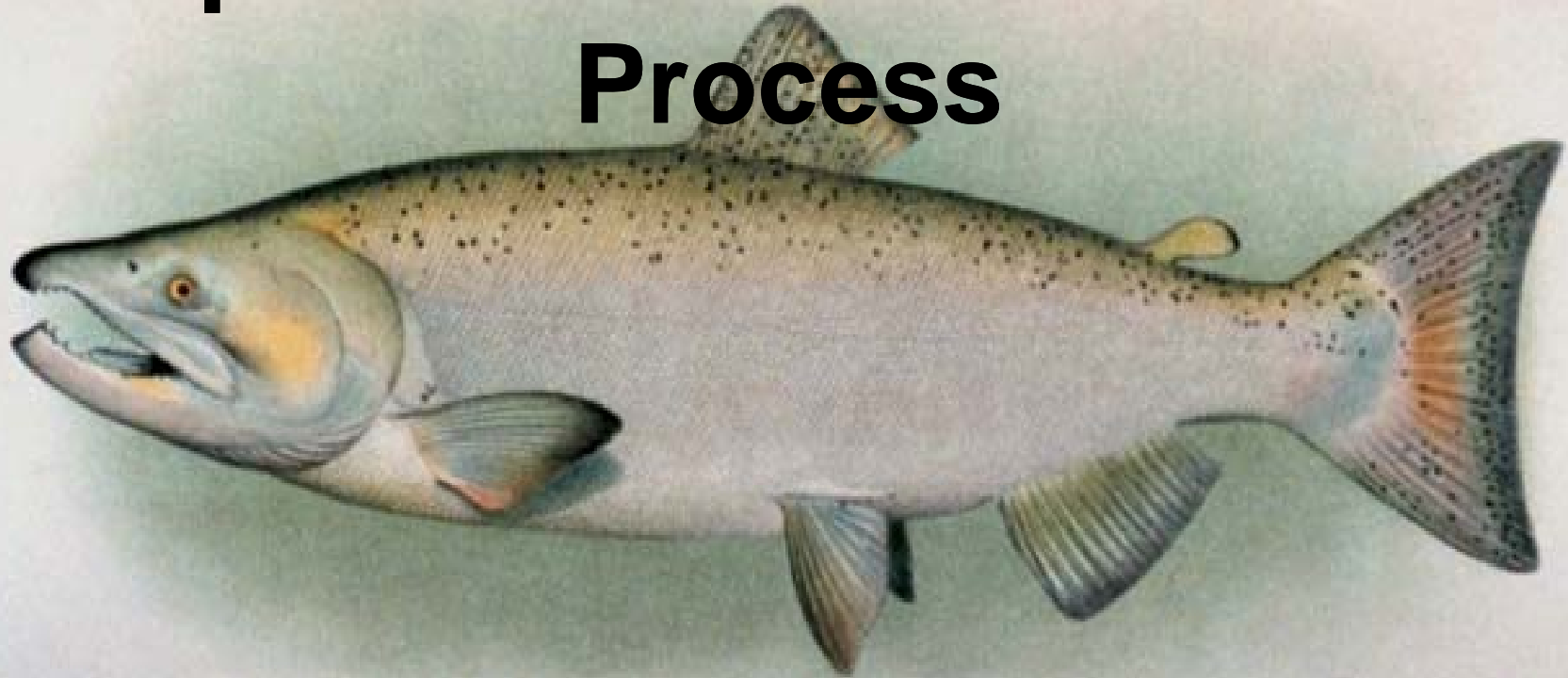


Streamlining the Endangered Species Act Consultation Process



Diane Driscoll
Washington State Habitat Office
National Marine Fisheries Service

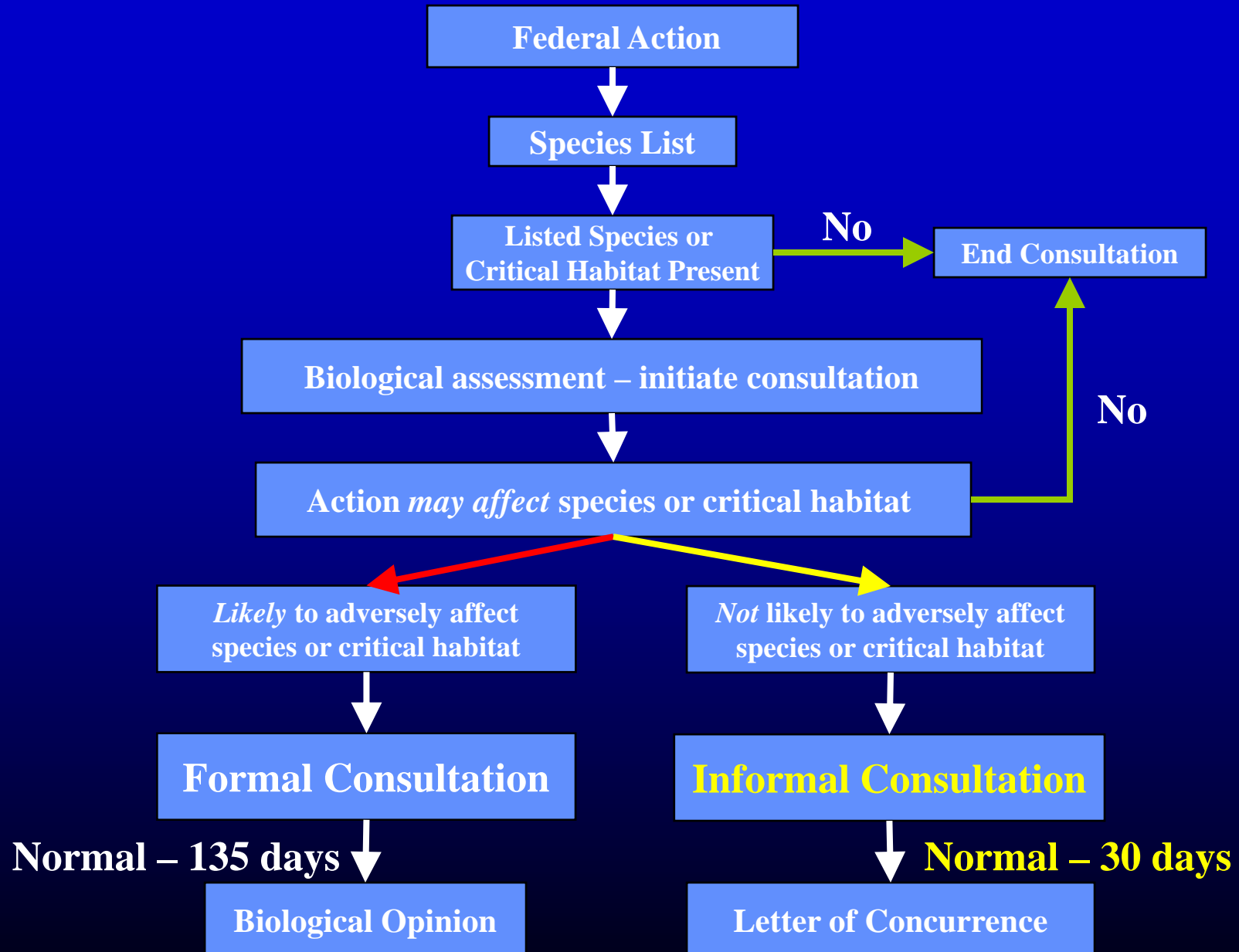
NMFS's ESA Statutory Guidelines

• **Endangered Species Act**

- Listing (Section 4)
- Protective Regulations (Section 4(d))
- Recovery (Section 4(f))
- **Interagency Cooperation (Section 7)**

- Requires all federal agencies, in consultation with NMFS and USFWS, shall:
- Section 7(a)(1) – use their authorities to conserve the ecosystems on which endangered and threatened species depend, and provide a program for conserving listed species
- Section 7(a)(2) – insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any listed species or *adversely modify critical habitat*

ESA Consultation Process and Timing



Pathways to Streamlined Consultation

- What if you want to do a project whose whole purpose is to help fish?

- Is there any other way to speed up the consultation process?

- Yes. You can use a Programmatic Biological Opinion (PBO).

- A PBO is a completed consultation that covers several types of actions specific to that PBO.

NMFS now has several
Programmatic Biological
Assessments and Programmatic
Biological Opinions to streamline
fish passage and restoration
projects.



What PBOs are available to use NOW (March 2009)?

- **Army Corps of Engineers (COE):
Washington State Fish Passage and
Habitat Enhancement Restoration
Programmatic. (PBA and PBO).**
- **Bonneville Power Administration Habitat
Improvement Projects Biological Opinion
II ((2007-2012) often called HIP II).**

PBOs available.....

- SRFB 4(d) Rule, Limit 8 Programmatic Biological Opinion can be used in the Yakima Subbasin not for use in the Upper Columbia ESUs).
- USFS, BIA, and BLM Aquatic Restoration Programmatic (OR and WA).

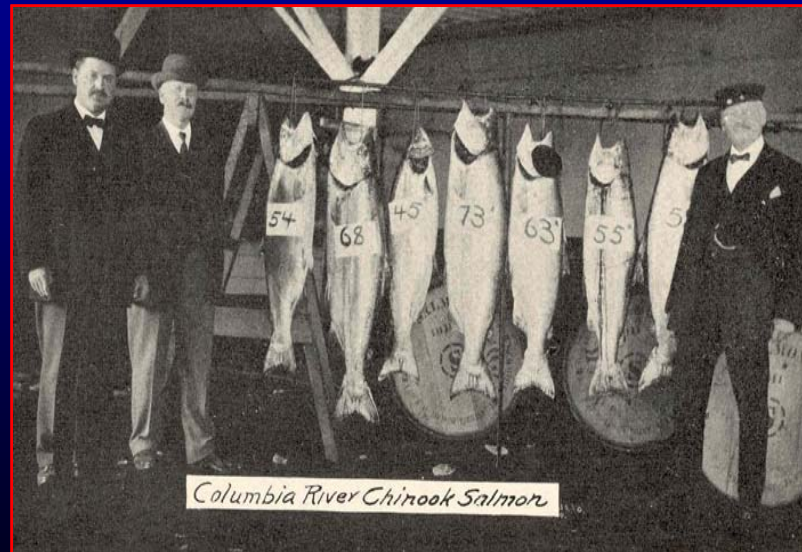
Coming very soon

**Programmatic Biological Opinion for the
COE to permit Habitat Restoration and
Preservation Projects in the Upper
Columbia, Yakima, and Klickitat Basins.**



How does a PBO work?

- No formal BA required but you still need to know what you want to do and how you intend to do it. Each PBO has mitigation and/or conservation measures required for compliance.



Source: University of Washington Freshwater and Marine Image Bank

How does a PBO work?

- Fill out a Specific Project Information Form (SPIF) and submit it to the agency (e.g., COE or BPA).
 - This form requires you to comply with certain conservation measures and to conduct the action in specific ways.



COE Fish Passage and Restoration PBO

- Sometimes called the Washington State PBO. In effect from 2008 through 2013.
 - May be used on all tribal, private, county, state and Federal lands except:
 - USFS/BLM land (different PBO applies)
 - Certain bull trout spawning and rearing areas
 - Limit on in-stream components or in-stream effects (including sedimentation to 5% of anadromous streammiles/fifth field HUC)

Types of projects included in COE PBO:

1. Fish Passage

- Culvert Replacement & Relocation
- Retrofitting culverts
- Culvert removal
- Removal/Modification of sediment bars or terraces that block/delay salmonid movement
- Temporary placement of sandbags, hay bales, ecology blocks to improve passage
- Construction of structures for passage over small dams

2. Installation of instream structures

Placement of woody debris

Placement of live stakes

Placement of engineered log jams

Grade control ELJs

Trapping mobile wood

Placement of boulders

Boulder weirs and roughened channels

Gravel placement assoc. with structure
placement

COE PBO cont....

3. Levee removal and modification
4. Side channel/off-channel habitat restoration and reconnection
5. Salmonid spawning gravel restoration
6. Forage fish spawning gravel restoration
7. Hardened fords for livestock crossings of streams and fencing

Implementation Process

- Applicant fills out SPIF
 - This form requires you to comply with certain conservation measures and to conduct the action in specific ways.
- COE reviews and sends SPIF to Services
- Electronic approval from Services necessary prior to issuing a permit for formal and informal SPIFs/consultations



COE Programmatic:

<http://www.nws.usace.army.mil/PublicMenu/Menu.cfm?sitename=REG&pagename=2008FishRestoration>

MaryAnn Baird 206-764-5531

Maryann.Baird@nws02.usace.army.mil

Another PBO available

- Bonneville Power Administration
Habitat Improvement Projects
Biological Opinion II ((2007-2012)
often called HIP II)
- *does not cover bull trout

HIP PBO

- Types of Actions covered:

Planning and Habitat Protection Actions

- Surveying, Construction, Operation, and Maintenance Activities.
- Acquire Fee-Title or Easement, Enter into Cooperative Agreements, and/or Lease Land and/or Water.
- Protect Streambanks Using Bioengineering Methods

BPA HIP II cont....

Small-Scale Instream Habitat Actions

- **Install Habitat-Forming Natural Material Instream Structures (Large Wood, Boulders, and Gravel)**
- **Improve Secondary Channel Habitats. Create, Rehabilitate, and Enhance Riparian and Wetland Habitat**
- **Improve Fish Passage**
- **Supplement In-Channel Nutrients**

BPA HIP II cont.....

Livestock Impact Reduction

- Construct Fencing for Grazing Control
- Install Off-Channel Watering Facilities
- Harden Fords for Livestock Crossings of Streams

Control of Soil Erosion from Upland Farming

- Create Upland Conservation Buffers
- Implement Conservation Cropping Systems
- Stabilize Soils via Planting and Seeding
- Implement Erosion Control Practices

BPA HIP II cont....

Irrigation and Water Delivery/Management Actions

- Convert Delivery System to Drip or Sprinkler Irrigation
- Convert Water Conveyance from Open Ditch to Pipeline or Line Leaking Ditches and Canals
- Convert from Instream Diversions to Groundwater Wells for Primary Water Source
 - Install New or Upgrade/Maintain Existing Fish Screens

BPA HIP II cont....

- Consolidate Diversions, or Replace Existing Irrigation Diversions with Pump Stations, or Remove Unneeded Diversion Structures
- Install or Replace Return Flow Cooling Systems
- Install Irrigation Water Siphon Beneath Waterway

BPA HIP II cont....

Native Plant Community Establishment and Protection

- Plant Vegetation
- Manage Vegetation Using Physical Controls
- Manage Vegetation Using Herbicides

Road Actions

- Maintain Roads
- Maintain, Remove, and Replace Bridges, Culverts, and Fords
- Decommission Roads

BPA HIP II cont....

- **Special Actions**
 - Install/Develop Wildlife Structures
 - **BPA HIP II:**
http://www.efw.bpa.gov/environmental_services/NOAAFishHIPBiOp.pdf
 - **Contact: Nancy Weintraub 503-230-5373**

SRFB 4(d) Rule, Limit 8

Programmatic Habitat Restoration

Biological Opinion

- Qualifying criteria:
- Must have the potential to impact fish listed as threatened under the ESA
- Are part of a habitat portion of a salmon recovery plan approved by a Regional Salmon Recovery Organization and the State of Washington and published in the Federal Register by NMFS; and

4(d) Limit 8 PBO cont....

- Are part of an adopted Implementation Schedule 1 developed by a Regional Organization to implement the habitat portion of a Salmon Recovery Plan.
- Are funded in part or wholly with Washington State and/or Pacific Coastal Salmon Recovery Fund (PCSRF) monies managed by the SRFB and are consistent with the technical and procedural criteria outlined by SRFB.
- Must be done for the purpose of habitat restoration

4(d) Limit 8 PBO cont....

- Eligible Projects:
 - In-stream Passage
 - In-stream diversion screening
 - In-stream habitat
 - Riparian habitat restoration
 - Upland habitat restoration or protection
 - Estuarine and Marine nearshore habitat restoration
 - Monitoring

4(d) Limit 8 PBO cont....

Application consists of a self-certification form and is part of the JARPA (Joint Aquatic Resource Permit Application) Process.

JARPA: www.epermitting.org/site/alias_ResourceCenter/9983/jarpa_process.aspx

Randy McIntosh, NMFS 360-534-9309
Randy.Mcintosh@noaa.gov

Why the Recovery Plan PBO Will Be Better than The COE Programmatic (NMFS 2008) or HIP (II):

1. This document will ensure that projects proposed for restoration activities that are described in the recovery plans will have the highest probability of success, and that the process to start these projects will proceed in a timely manner.
2. Those consultations exclude some activities and put limits on other activities that this document does not.

Six general categories of projects:

1. Fish passage

Examples:

- Installation or improvement of fish ladders/fishways
- Culverts (removal, upgrade)
- Dam removal
- etc.....



2. Fish Screens (installation, removal, upgrade).

3. Instream:

- Bank stabilization
- LWD
- Channel connectivity
- Off channel habitat
- Many more.....

4. Off Channel Wetlands Improvement, Restoration, Enhancement.....

5. Sediment Reduction

- Road reconstruction or relocation
- Vegetation alongside roads
- Erosion control
- Etc.....

6. Survey Stream Channels, Floodplains, and Uplands; Install Stream Monitoring Devices

Useful websites

- **NMFS NorthWest Region**
- **<http://www.nwr.noaa.gov/>**
- **<http://www.nwr.noaa.gov/ESA-Salmon-Listings/Index.cfm>**

*Many men go fishing all of their lives
without
knowing that it is not fish they are
after.*

-- Henry David Thoreau

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