



SUBJECT Qualification Program for ESA Effects Determinations	FINAL NUMBER GE12-01(B) WEB LINK(S) http://www.oregon.gov/ODOT/HWY/TECHSERV/Pages/technicalguidance.aspx#Bulletins	EFFECTIVE DATE 03/01/2012	VALIDATION DATE 09/16/2013	SUPERSEDES GE08-01(B)
TOPIC/PROGRAM Natural Resources Unit - Biology Program	Original signed by: Susan Haupt Geo-Environmental Manager			

PURPOSE

This bulletin supersedes Technical Services Bulletin GE08-01(B) and establishes professional qualifications and expectations for Agency Biologists, Local Governments, and the consultant community that contracts with the Oregon Department of Transportation (ODOT) to perform ESA compliance documentation and effects determinations under Section 7 of the federal Endangered Species Act (ESA) and complete ESA compliance documents. Only Biologists who pass the Qualification Program described in this Technical Bulletin are authorized to make ESA compliance documentation and effects determinations for ODOT on behalf of federal nexus agencies.

GUIDANCE

To improve the consistency of ESA effects determinations for transportation projects and streamline interagency consultation, ODOT requires both internal and external Biologists to possess minimum professional requirements, take a training course, and pass a written exam before they are authorized to provide ESA effects determinations. Additionally, consulting firms must retain on staff a minimum of one Biologist who meets the above requirements before they will be awarded contracts to make ESA effects determinations.

A Biologist qualified under this program must provide a signature on each ESA compliance document signifying that they assure its quality based on ODOT document standards. ODOT requires the use of standardized templates for effects determinations, including but not limited to: No Effect Memos, individual Biological Assessments (BA) and programmatic ESA documents. Information expectations for documenting determinations are at the discretion of the lead federal action agency but are based on guidance from the ESA regulatory agencies: U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS); these two agencies are collectively referred to as the Services. For federal aid transportation projects, the Federal Highway Administration (FHWA) typically is the lead federal action agency.

DEFINITIONS & ACRONYMS

Biological Assessment (BA) – information prepared by, or under the direction of, a federal agency: (1) to evaluate the potential effects of a proposed action on ESA-listed/proposed species and designated/proposed critical habitat, and (2) to determine whether any such species or habitat is likely to be adversely affected by the action. [50 CFR §402.02, 50 CFR §402.12]

Biological Assessment Committee (BAC) – the original 2004 interagency team of stakeholders who assisted in development of the ODOT Consultant Qualification for BA Deliverables Program and guidance to improve consultant delivered ESA effects determinations.

BA Checklist – a list of information and topics that must be included in BA produced for ODOT; Biologists qualified by ODOT are required to ensure that all checklist items are included in BA prior to submittal to ODOT.

Biological Assessment Committee (BAC) – the original 2004 interagency team of stakeholders who assisted in development of the ODOT Consultant Qualification for BA Deliverables Program and guidance to improve consultant-delivered ESA effects determinations.

Biological Opinion (BO) – a document that includes: (1) the opinion of the Services as to whether or not a federal action is likely to jeopardize the continued existence of ESA-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 ESA-listed species or designated critical habitat. [50 CFR §402.02, 50 CFR §402.14(h)]

Biologist – a specialist in the natural sciences (see page 4 for minimum qualifications for education and experience).

Consultation – the process required of a federal agency under Section 7 of the ESA when any activity authorized, carried out, or conducted by that agency may affect a listed species or designated critical habitat; consultation is with USFWS, NMFS, or both.

Designated Critical Habitat – specific geographic areas, whether occupied by an ESA-listed species or not, that are essential for the conservation of a listed species and that have been formally designated by rule published in the Federal Register.

Endangered Species Act (ESA) of 1973 [16 USC 1531 et seq.] – the purpose of the ESA is to protect and recover imperiled species and the ecosystems upon which they depend.

ESA Effects Determination – determination of the direct, indirect, or no effects of an action on an ESA-listed/proposed species or designated/proposed critical habitat, together with the effects of other activities that are interrelated or interdependent with that action. Three effects determinations are possible: no effect, may affect and not likely to adversely affect (NLAA), may affect and likely to adversely affect (LAA).

Federal Aid Highway Programmatic (FAHP) – The FHWA's statewide programmatic ESA consultation on Oregon's Federal-Aid Highway Program for species listed as threatened or endangered under the federal ESA.

Federal Highway Administration (FHWA) – a division of the U.S. Department of Transportation that oversees federal funds used for constructing and maintaining the [National Highway System](#) (primarily [Interstate Highways](#), [U.S. Routes](#) and most State Routes). Typically FHWA is the lead federal action agency for federal aid transportation projects

Listed Species – a species, subspecies, or distinct population segment that is on the federal list of endangered and threatened wildlife and plants.

National Marine Fisheries Service (NMFS) – the federal agency with primary responsibility under the ESA for marine wildlife and anadromous fish.

No Effect Memo – information prepared by or under the guidance of ODOT that documents the determination that a transportation project with a federal nexus will have no effect, either positive or negative, on listed species or designated critical habitat.

Oregon Department of Transportation (ODOT) – the state agency that works to provide a safe, efficient transportation system that supports economic opportunity and livable communities in Oregon

Price Agreement (PA) – sets forth the terms and conditions applicable to services that may be required under work order contracts entered into between ODOT and a contractor.

Services – collective term for NMFS and USFWS, the two agencies with regulatory authority under the federal ESA.

Statement of Work (SOW) – The SOW is the primary means through which ODOT communicates contract performance obligations and duties.

The Services – collective term for NMFS and USFWS, the two regulatory agencies for the federal ESA.

United States Fish and Wildlife Service (USFWS) – the federal agency with primary responsibility under the ESA for terrestrial and freshwater organisms.

BACKGROUND/REFERENCE

A Biological Assessment Committee (BAC) was convened in fall 2004 to develop and implement a plan to improve the quality of BAs produced by consultants for ODOT. The committee was chaired by the ODOT Natural Resources Unit Manager. Participants included stakeholders and representatives of ODOT Sections and external agency partners. The BAC identified two desired outcomes: (1) develop a training program that establishes ODOT expectations for BAs, and (2) develop a process to ensure that BAs are of a consistent quality.

The goals of the BAC were as follows:

- Include representatives from all agencies involved with ODOT in ESA consultation.
- Create efficiency in interagency ESA consultation.
- Improve the quality and consistency of consultant delivered BAs.
- Reduce the cost of consultant delivered BAs.
- Develop a method to better manage consultants consistently across the Agency.

- Create a standardized training program on interagency consultation under ESA specific for transportation.
- Obtain feedback on the effectiveness of the training.

The resulting training program 'ODOT Consultant Qualification for Biological Assessment Deliverables' was offered in 2005, 2006, and 2008. Each year, the program built upon lessons learned and new regulatory developments. In 2009, the training program was expanded to establish consultant expectations for No Effect Memos in addition to BAs, and to have a process to ensure that all types of ESA effects determinations are of consistent quality. In 2010, the training program was renamed the 'ODOT Qualification Program for ESA Effects Determinations' and it was clarified that all individuals, whether internal or external, who make effects determinations for ODOT (including Local Governments) must be qualified under the ODOT program.

Because ODOT Biologists who wish to make effects determinations for ESA-listed species are expected to enter the Qualification Program with a working knowledge of ESA, general ESA training by ODOT was removed from the program in 2011, and training concentrates instead on ESA templates and compliance processes specific to ODOT. To demonstrate their working knowledge of ESA, Biologists must pass an ESA test developed by ODOT to complete the training and gain certification.

In 2013, the ESA training program was further expanded to include expectations for the statewide programmatic ESA consultation on Oregon's Federal-Aid Highway Program. To reflect this change, the training program was renamed the 'ODOT Qualification Program for ESA Compliance.' All highway projects managed by ODOT (including local agency) that are funded by the Federal-Aid Highway Program must use the Federal-Aid Highway Program Programmatic (FAHP) for ESA consultation when a project is within the scope of the FAHP.

EXPLANATION

Elements of the ODOT Qualification Program for ESA Effects Determinations are below. Additional information on the program may be found on the ODOT Biology Program web page:

<http://www.oregon.gov/ODOT/HWY/GEOENVIRONMENTAL/Pages/biology.aspx>

1) Minimum Qualifications

Biologists eligible to produce ESA effects determinations on behalf of ODOT are required to meet minimum professional qualifications. These include having a Bachelor's degree with 30-quarter or 20-semester hours in biological or environmental disciplines and three full-year equivalents of environmental analysis or project resource management experience. A minimum of three full-year equivalents of relevant biological experience may be substituted for the degree requirement. Documentation of required education and experience is mandatory for non-ODOT personnel seeking qualification.

2) Training and Testing

Biologists who meet the minimum qualifications must completed ODOT training and testing to become an ODOT Qualified Biologist. Required training consists of a main course and refresher courses. The ESA effects determination course was

developed by ODOT in partnership with FHWA, NMFS, and USFWS, and it is revised as necessary for each subsequent offering. Course prerequisites include a working knowledge of the ESA (16 USC 1531 et seq.), ESA regulations (50 CFR 17, 50 CFR 402), and the Endangered Species Consultation Handbook (USFWS and NMFS 1998). For individuals seeking to improve their understanding of the ESA, courses are regularly available from a variety of external agencies, organizations, and institutions. Because ESA knowledge as defined above is assumed of all participants, the main course content for the ODOT Qualification Program focuses on ODOT-specific ESA compliance processes and templates. Changes to ESA regulatory and ODOT procedural changes are addressed in “refresher” trainings. The main course and refresher training are offered as need.

Following the training, course participants must pass a two-part written examination. A passing score of 80% on each of the two parts of a timed, open-book, multiple-choice/short-answer test qualifies the Biologist to make effects determinations for ODOT and to assure their quality. Part I of the exam covers ESA regulations and the Consultation Handbook, information that course participants are expected to pre-possess and therefore not covered in the ODOT course. Part II of the exam covers ODOT-specific ESA compliance processes and templates discussed during the training. Individuals are given three opportunities in one 12-month period to pass both parts of the exam. Individuals who fail to pass the full exam following three attempts are required to re-take the main course no sooner than the following year.

Language in the 2010 ODOT Price Agreement (PA) for Biological and Wetland Services states: “At least one individual who signs, either as author or reviewer of ESA effects determinations documents, must be an ODOT Qualified Biologist. If Consultant fails to have at least one Biologist successfully complete the qualification process within 60 calendar days of PA award...Agency may terminate the PA.” The Qualification Program described in the PA is the ‘ODOT Qualification Program for ESA Compliance’ described in this Bulletin, and therefore ‘ESA effects determinations’ includes ESA compliance documents. Statement of Work (SOW) for this PA or other professional services contracts for biological services on ODOT projects will reflect the requirements of this qualifications program.

3) Ensuring Quality

ODOT has three additional expectations to promote the quality of ESA compliance and effects determinations produced on behalf of ODOT.

- (1) The most recent ODOT templates must be used; templates are posted on the ODOT Biology Program web page. Qualified Biologists are expected to check for updated template each time they produce new ESA documents; ODOT is not responsible for notifying qualified Biologists each time updates are produced.
- (2) A qualified Biologist must sign the No Effect Memo And official ESA compliance documents thereby certifying that the documents meet ODOT's standard of quality.

- (3) To remain qualified, Biologists under this program are required to take a refresher course. After training dates are posted, individuals with scheduling conflicts should contact ODOT Training Consultant. .

RESPONSIBILITIES

Environmental Leadership Team (ELT)

- Communicate expectations of the ODOT Qualification Program for ESA Compliance and Documentation to Region environmental staff and Work Order Coordinators.
- Forward Qualification Program issues and suggestions for improvement to the Geo-Environmental Section, Environmental Resources Unit.

Geo-Environmental Section, Environmental Resources Unit (ERU)

- Develop and revise the Qualification Program for ESA Compliance and documentation and all associated templates and guidance.
- Develop and revise the required exam.
- Post program documents on ODOT's Biology webpage.
- Involve stakeholders as needed to ensure that the goals of the Qualification Program are being met.
- Work with ODOT Training Consultant to offer the qualification course and refresher courses as needed for individuals to maintain their ODOT qualification status.

Region Environmental Staff

- For contracted effects determinations and compliance documents only use consultant firms that retain at least one Biologist qualified under this program; the list of qualified firms and Biologists is located on the ODOT Biology webpage.
- Ensure that each No Effect Memo and official ESA document is signed by a Biologist who has successfully completed this Qualification Program and who retains qualification.

Local Agency Liaisons

- Consult with Region Environmental Staff regarding ESA documentation and submittal processes required for Local Government projects.

Technical Services Senior Training Consultant

- Using the documentation submitted, confirm that non-ODOT registrants meet ODOT Biologist education and experience requirements.
- Administer and correct tests developed for the program, track test scores, and track Biologists qualified by ODOT to perform ESA effects determinations.
- Provide retesting opportunities as necessary.
- Establish an ODOT expenditure account and manage payments received from training participants.

Consultants and Local Governments that Provide Effect Determinations to ODOT

- Enroll in Qualification Program for ESA Effects Compliance and Documentation course and track attendance.

- Meet the minimum qualifications identified in this Bulletin to be eligible to produce determinations on behalf of ODOT.
- Check the ODOT Biology Program website for updated guidance and templates; use the most recent information and templates.
Submit ESA documents to Region Environmental Staff for submittal to federal nexus and regulatory agencies.

ACTION REQUIRED

Provide feedback to the Technical Services Leadership Team on the effectiveness of the ODOT Qualification Program for ESA Effects Determinations.

SPECIAL INSTRUCTIONS

This Bulletin supersedes GE08-01(B) and is effective immediately. This Bulletin shall be followed when included in the terms and conditions of ODOT contracts and Local Government contracts for transportation projects that receive Federal Aid Highway Program funding and/or that have a federal nexus.

CONTACT INFORMATION

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