

## **15.0 Performance-Based, Batched, and Programmatic Biological Assessments**

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## 15.0 Performance-Based, Batched, and Programmatic Biological Assessments

### Chapter Summary

- Performance-based biological assessments (BAs) and biological evaluations (BEs) are often written early in the design phase of a project. Because detailed information on the project description and design is lacking at that early stage, these reports are general in nature and are intended to provide safeguards for habitat and species by defining actions that will not be included in the project or impacts that will be avoided.
- Batched BAs and programmatic BAs or BEs provide collective coverage for groups of projects.
- Batched BAs can be grouped by project type or by geographic location.
- Programmatic BAs and programmatic BEs typically are written to cover several project types with NLTAA and LTAA determinations focusing on either: 1) a finite period of time (defined in the programmatic BA), 2) a defined geographic area, or 3) a particular species.
- Programmatic BAs and BEs establish conditions allowing specific activities that occur within general programs to typically proceed without individual concurrence from the Services for each project, provided that the project meets the requirements of the programmatic BA or BE.
- The U.S. Army Corps of Engineers has four programmatic BEs/BAs available for public use in Washington State.
  - The first Corps programmatic BE covers many of the common activities permitted under their Nationwide Permit program. Details on Phase 1 activities and the species that are covered are provided in Section 15.2.
  - The second Corps of Engineers programmatic BA is titled: Programmatic Biological Assessment for Fish Passage and Habitat Restoration in Washington State. It addresses primarily beneficial restoration projects that may affect species administered by both the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS). Specific activities are given in Section 15.2.

- The third and fourth Corps Programmatic consultations with NMFS cover activities specifically located within Lake Washington and Lake Sammamish.

This chapter provides a general overview of performance-based BAs, batched BAs, and programmatic BAs and BEs, and identifies information sources for learning more about them. This chapter also discusses the Corps of Engineers programmatic BE/BAs.

## 15.1 General Considerations

Any major construction project with a federal nexus (defined as receiving federal funding, requiring federal permits, or taking place on federal lands) is required under the Endangered Species Act to submit a BA to evaluate the impact of the project on listed species. This in turn requires consultation with the Services.

The process of producing a BA and receiving concurrence from the Services can take from one month to one year, depending upon the complexity of the proposed project. The Services and many action agencies have been working to streamline this process. These entities increasingly have been developing BAs early in the design process, in some cases, performance-based BAs.

The Services and action agencies also have been developing BAs that provide coverage for multiple projects within a single encompassing report. These documents, called batched BAs and programmatic biological assessments or biological evaluations, provide collective coverage for groups of projects of several types:

- Specific projects of a similar type (batched BA)
- Specific projects that take place in a similar region (batched BA)
- General programs of activities rather than individual projects (programmatic BA or BE).

### 15.1.1 Performance-Based Biological Assessments

Occasionally, BAs must be developed early in the design phase of a project in order to support the National Environmental Policy Act (NEPA) process. NEPA EIS documents cannot be signed and adopted until the ESA Section 7 consultation process has been completed. Performance-based BAs are usually written for large, complex projects requiring years to complete project designs and secure all necessary permits.

A performance-based BA is often written before there is a detailed description of the proposed action or even before an alternative is chosen. In order to develop effect determinations that can be supported, these BAs must establish safeguards for habitat and species that will be

implemented by the project. These safeguards often outline activities that will *not* be included in a project (e.g., the project will not entail in-water work, will not disturb riparian vegetation, will not fill wetlands, or will avoid placing bridge elements below the OHWM). Often these BAs place limitations on the scope of the project and project impacts (e.g., the bridge will span the entire floodplain; the project will be completed within one construction season; or no more than one acre of vegetation will be removed). Lacking a clear project description, a performance-based BA defines the project by specifying activities and elements that are not included or allowed in the project.

Because these BAs are written prior to completing project designs, often consultation must be reinitiated after the scope of the project has been more clearly defined. Reinitiation in this case allows for a more detailed and thorough analysis of effects based upon current or final project designs.

### **15.1.2 Batched Biological Assessments**

Projects can be grouped by project type (e.g., pavers or bridge scour repair) or by geographic location (e.g., projects within a single watershed). General impacts are identified, discussed, and evaluated in the batched BA, and minimization measures are developed to minimize these common impacts. Site-specific impacts are discussed as necessary in relation to the projects. WSDOT has successfully used batched BAs to address paving projects.

### **15.1.3 Programmatic Biological Assessments and Biological Evaluations**

Programmatic BAs and BEs typically are written to cover several project types with NE, NLTAA, and LTAA calls, either within a defined geographic area, over a limited period of time, or for a particular species (as defined in the programmatic BA). The programmatic BA may be approved by one or both of the Services.

Programmatic BAs group together activities that occur as part of a project (e.g., vegetation removal, in-water work, pile-driving, blasting, heavy equipment operation). Specific effect determination criteria are identified for each species addressed in the programmatic BA. Projects that cannot meet the criteria defined in the programmatic BA may require an individual BA for review and concurrence by the Services.

A project biologist reviews each individual project to determine whether it meets the requirements outlined in the programmatic BA. If a project meets those requirements, the project evaluation or assessment is documented through the use of a programmatic BA form or an abbreviated BA report, which is sent to the Services. With a few exceptions, projects complete their Section 7 requirements through the programmatic BA, so that individual concurrence from the Services is not required.

The process used for consultation and to document and track projects receiving coverage under a programmatic BA may differ slightly among programmatic BAs. For each programmatic BA, a form or an abbreviated BA template is provided to facilitate ongoing documentation of the

projects covered under that programmatic BA. This template is filled out by the action agency in coordination with the Services.

The Corps has four programmatic consultations in Washington State that address many minor construction activities that it implements directly or for which it issues permits, as well as fish passage and restoration activities. Each programmatic consultation is addressed in Section 15.2.

WSDOT has developed programmatic BAs for internal use by WSDOT biologists. In 2015, WSDOT implemented a statewide programmatic that replaced the two that covered USFWS species in eastern and western Washington. The second programmatic BA addresses projects and species throughout Washington that are under NMFS jurisdiction. These programmatic BAs apply only to a selection of WSDOT *no effect, not likely to adversely affect, and likely to adversely affect* projects.

WSDOT programmatic BAs were intended for use only by WSDOT biologists and were not available for use outside WSDOT, or for local agency projects. Due to a high volume of fish passage projects between 2021 and 2030, WSDOT is developing consultant accessibility to the programmatic database. WSDOT Local Programs will be implementing a programmatic consultation in 2020 or 2021 that can be used by local agencies.

#### **15.1.4 Information Sources**

The programmatic consultations the Corps has completed, as well as information on the required timing windows specified in these programmatic documents, are available online at < <http://www.nws.usace.army.mil/Missions/CivilWorks/Regulatory/PermitGuidebook/EndangeredSpecies.aspx> >.

Guidance provided by USFWS for transportation agencies developing programmatic strategies is available on the USFWS website. Also provided on this website is an outline of the general process for developing programmatic BAs <http://www.nws.usace.army.mil/Missions/CivilWorks/Regulatory/PermitGuidebook/EndangeredSpecies.aspx>

## 15.2 U.S. Army Corps of Engineers Programmatic Biological Evaluations/Assessments

### 15.2.1 Programmatic Biological Evaluation for the State of Washington for Salmonid Species Listed or Proposed by the National Marine Fisheries Service and the U.S. Fish and Wildlife Service Under the Endangered Species Act (Phase 1 Programmatic) and Revisions to Regional General Permits (RGP) 1 and 6 (Watercraft Lifts in Fresh and Marine/Estuarine Waters and Overwater Structures in Inland Marine Waters)

The Corps of Engineers produced this BE for portions of its nationwide and regional permit programs. The programmatic BE received concurrence from NMFS on January 16, 2008, and from USFWS on September 9, 2009 (renewed October 20, 2016).

The applicant must submit a Specific Project Information Form (SPIF) to the Corps, with subsequent approval by the Corps, and in some cases the USFWS. Sixty-eight potential Conservation Measures may be used.

Activities are allowed within the State of Washington with a few exceptions:

Effects to USFWS administered species are not covered in Lake Washington and Lake Sammamish (activities there are covered in a separate agreement); and

Effects to NMFS administered species are not covered for some activities in the Columbia River mainstem and Baker Bay.

This programmatic BE can be applied to actions covered under certain nationwide permits or regional general permits that the Corps believes merit a determination of NLTAA for fish and other species or designated critical habitat. Specific projects include the following:

- Aids to navigation
- Mooring buoys
- Piling repair and replacement (replacement of up to 20 existing pilings per structure using vibratory installation to the extent possible)
- Scientific measurement devices
- Oil spill containment
- Fish and wildlife harvesting
- Tideland markers

- Nearshore fill for State Hydraulic Project approval mitigation requirements
- Temporary recreational structures (not approved for listed salmon and steelhead)
- Minor bank stabilization, freshwater
- Minor bank stabilization, marine/estuarine
- Watercraft lifts and boat canopies, Regional General Permit 1
- Overwater structures in inland marine waters, Regional General Permit 6

The descriptions and conditions for the activities covered under the programmatic consultation may have conditions for specific species, activities, and geographical areas. Additionally, all activities must comply with the general implementation conditions and timing windows of the programmatic consultations.

### **15.2.2 Programmatic Biological Assessment for Fish Passage and Habitat Restoration Actions in Washington State**

This programmatic BA (June 6, 2008; revised July 29, 2008) primarily addresses fish habitat restoration. NMFS and the USFWS issued a joint biological opinion on July 8, 2008. The USFWS extended coverage for the 2008 Fish Passage and Restoration programmatic consultation until December 31, 2018 or until the amount of authorized take is reached. On June 21, 2017, the NMFS completed a new Fish Passage and Restoration programmatic consultation. The programmatic covers the short-term adverse effects of restoration projects such as temporary water quality impacts or fish handling. However, the general long-term aspect of the project must be beneficial to aquatic life. The activities covered under this programmatic consultation include:

- Fish passage
- Installation of instream structures
- Levee removal and modification
- Side channel/off channel habitat restoration and reconnection
- Salmonid spawning gravel restoration
- Forage fish spawning gravel restoration
- Hardened fords for livestock crossings of stream and fencing

- Irrigation screen installation and replacement
- Debris and structure removal

Similar to the limitations described for the Phase I programmatic BE, restoration projects must meet defined Conservation Measures stipulated in the document for each Action Category.

### **15.2.3 Programmatic Biological Assessment for Selected Activities in the Lake Washington and Lake Sammamish Basins.**

A programmatic letter of concurrence was issued by the USFWS to the Corps on June 25, 2009 (On August 25, 2014, the USFWS extended the life of the programmatic until any of the following occur: 1) new information reveals that activities or the effects of activities to listed species or critical habitat are different than those considered in this consultation, 2) if any of the activities are subsequently modified in a manner that causes an effect to a listed species or critical habitat that was not considered in this consultation, and 3) a new species is listed or critical habitat designated that may be affected by the activities. . This programmatic covers certain actions to bull trout and bull trout critical habitat in the Lake Washington and Lake Sammamish basins. Only activities that result in may effect, not likely to adversely affect determinations are covered. Activities include:

- Overwater structures
- Boat lift, jet-ski lift, installation or relocation
- Fill placement
- Shoreline stabilization
- Shoreline/riparian enhancement; and irrigation withdrawals

On February 17, 2017, NMFS issued a biological opinion covering Puget Sound steelhead and Chinook salmon. The applicant must submit a Specific Project Information Form (SPIF) to the Corps. Mandatory conservation measures are needed for each activity.

### **15.2.4 Programmatic Biological Evaluation for Shoreline Protection Alternatives in Lake Washington**

This programmatic is used for replacing existing rip rap and concrete bulkhead projects in Lake Washington. It covers both USFWS and NMFS administered species.

