

## **19.0 Submitting a No-Effect Letter or Biological Assessment**

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## 19.0 Submitting a No-Effect Letter or Biological Assessment

Section 7 consultation is initiated with the Services (NOAA Fisheries or USFWS) by submittal of a biological assessment with a cover letter requesting consultation. Consultation is initiated by the appropriate WSDOT Regional Biologist not the project biologist. Project biologists are responsible for completing the biological assessment analysis and providing this documentation along with required effect determinations to the project manager or regional biologist, depending on which individual has served as the primary point of contact throughout the development of the biological assessment. The project manager will coordinate with the regional biologist to ensure the documents are submitted, along with a formal cover letter, to the Services for consultation.

A *no-effect* letter or *no effect* assessment, indicating that a project will not result in an adverse effect on listed species or designated critical habitat, documents the *no-effect* determination for the federal action agency and does not require concurrence by the Services, but it must be documented with the appropriate agency.

Determining which agencies require the particular forms of documentation can be confusing and depends on the current policies of the USFWS, NOAA Fisheries, and the federal action agencies involved. This chapter provides guidance to WSDOT Regional Biologists for identifying the agencies that require documentation regarding *no-effect* determinations or initiating Section 7 consultation with the Services.

This chapter, in particular the templates and checklists for no effect letters and biological assessments, has been included in this manual as a reference for project biologists to aid in the preparation of biological assessments.

### 19.1 Submitting a No-Effect Letter or No Effect Assessment

No-effect letter or no effect assessments recipients, copy recipients, required attachments, and contacts for coordinating consultation for WSDOT projects are listed in Tables 19-1 and 19-2.

All no-effect letters or no effect assessments are sent to the federal action agency (FHWA or the Corps of Engineers) for its files. Because no effect documents are sent to the action agency only, biologists may choose to address species under the jurisdictions of USFWS and NOAA Fisheries in a single letter rather than in two separate letters.

Copies of the no-effect document and enclosures should be sent to the WSDOT regional biologist or biology program manager and the regional environmental manager. USFWS and NOAA have requested that they not be sent copies of no-effect letters or assessments.

**Table 19-1. Document routing for no-effect letters/assessments and biological assessments.**

Document Type	Effect Determination	Sender	Recipient	Copy Recipients:
<b>For species under the jurisdiction of NOAA Fisheries</b>				
No-effect letter or assessment	NE	Nonfederal designee <sup>a</sup>	FHWA or Corps of Engineers	WSDOT region <sup>b</sup> FHWA or Corps of Engineers Corps of Engineers (for FHWA projects requiring a Corps permit)
Informal initiation package	NLTAA	Nonfederal designee <sup>a</sup>	NOAA Fisheries	WSDOT region <sup>b</sup> FHWA or Corps of Engineers Corps of Engineers (for FHWA projects requiring a Corps permit)
Formal initiation package	LTAA	Federal action agency (FHWA or Corps of Engineers) <sup>b</sup>	NOAA Fisheries	WSDOT region <sup>b</sup> Corps of Engineers (for FHWA projects requiring a Corps permit)
<b>For species under the jurisdiction of USFWS</b>				
No-effect letter or assessment	NE	Nonfederal designee <sup>a</sup>	FHWA or Corps of Engineers	WSDOT region <sup>b</sup> FHWA or Corps of Engineers Corps of Engineers (for FHWA projects requiring a Corps permit)
Informal initiation package	NLTAA	Nonfederal designee <sup>a</sup>	USFWS	WSDOT region <sup>b</sup> FHWA or Corps of Engineers Corps of Engineers (for FHWA projects requiring a Corps permit)
Formal initiation package	LTAA	Federal action agency (FHWA or Corps of Engineers) <sup>c</sup>	USFWS	WSDOT region <sup>b</sup> Corps of Engineers (for FHWA projects requiring a Corps permit)

<sup>a</sup> The nonfederal designee status is issued to a state or local agency in a letter by a federal action agency. FHWA has designated WSDOT as its nonfederal designee. The Corps of Engineers has several nonfederal designees, including WSDOT. Other agencies such as USFS, USNP, FTA and FRA have not made this designation.

<sup>b</sup> WSDOT region: Include the regional biologist or biology program manager and the regional environmental manager.

<sup>c</sup> WSDOT sends the project information and effect determinations in the form of a draft cover letter by electronic mail to the federal action agency. The BA is sent only in hard copy form to the federal action agency.

**Table 19-2. WSDOT contact list for no-effect letters/assessments and biological assessments.**

Agency	Address
USFWS Eastern Washington	Current manager Eastern Washington field office U.S. Fish and Wildlife Service 11103 E. Montgomery Drive Spokane, WA 99206
USFWS Western Washington	Current manager Western Washington Fish and Wildlife Office U.S. Fish and Wildlife Service 510 Desmond Drive SE, Suite 102 Lacey, WA 98503-1273
NOAA Fisheries	Current director NOAA Fisheries Habitat Program/Olympia field office 510 Desmond Drive SE, Suite 103 Lacey, WA 98503-1273
FHWA	Area engineer FHWA < <a href="http://www.fhwa.dot.gov/wadiv/progdel.htm">http://www.fhwa.dot.gov/wadiv/progdel.htm</a> >
Corps of Engineers	Corps liaison- see Liason Branch section of < <a href="http://www.wsdot.wa.gov/Environment/resource_liaisons.htm">http://www.wsdot.wa.gov/Environment/resource_liaisons.htm</a> >
WSDOT	Regional biologist or biology program manager or Environmental manager < <a href="http://www.wsdot.wa.gov/Environment/Contacts.htm">http://www.wsdot.wa.gov/Environment/Contacts.htm</a> >

If a project is conducted by FHWA and requires a permit from the U.S. Army Corps of Engineers, the Corps also receives a copy of the no-effect letter and enclosures.

No-effect letters should be submitted with vicinity and site maps, site photographs, and a species list. Examples of no-effect letters are provided in Section 19.1.1.

### **19.1.1 No-Effect Letter Template**

The no effect (NE) letter template should be used for projects that result in a no effect determination on listed species or designated critical habitat, such as projects with no new impervious surface, no species use of the action area, or no potential indirect effects. The NE letter should be only 2 to 4 pages in length. The most current no effect letter template is available on WSDOT's website at: <[http://www.wsdot.wa.gov/NR/rdonlyres/703D4347-8F0B-4E2F-82A1-C8B70DBB0275/0/BA\\_NoEffectLtrTemplate.pdf](http://www.wsdot.wa.gov/NR/rdonlyres/703D4347-8F0B-4E2F-82A1-C8B70DBB0275/0/BA_NoEffectLtrTemplate.pdf)>.

The NE letter should be addressed to the FHWA Area Engineer or the Corps of Engineers Liaison; however, the NE letter should only be sent by WSDOT, and should be provided to WSDOT in an electronic form for final formatting and signature. Include the project name, WSDOT project number and, if applicable the FHWA project number in the subject line. The NEL should end with this language: *“It is our understanding that this satisfies our responsibilities under Section 7(c) of the Endangered Species Act at this time, and we are sending you this copy of our assessment for your files. We will continue to remain aware of any change in status of these species and will be prepared to re-evaluate potential project impacts if necessary.”* If FHWA is the lead and the project requires a Corps permit, then the Corps of Engineers should also be cc'd. If the Corps of Engineers is the lead, there is no federal funding so FHWA is not cc'd.

## Examples of No-Effect Letters

### ***19.1.1.1 No-Effect Letter Submitted to the Federal Highway Administration for Species Under the Jurisdiction of the U.S. Fish and Wildlife Service***

*Date*

*Name of area engineer*

Federal Highway Administration

*Region*

*Address*

Subject: No-effect Letter; SR 302, Elgin – Clifton Road Intersection, MP 10.51 to 10.63  
WSDOT Project No. \_\_\_\_\_  
Federal Aid No. \_\_\_\_\_

Dear *name of area engineer*:

*Describe project:* The Washington State Department of Transportation (WSDOT) is proposing to improve safety at a high accident location by installing a traffic signal with possible illumination, repairing a failing shoulder, upgrading associated signs, repaving, and restriping the intersection of State Route (SR) 302 at the Elgin–Clifton road intersection. The intersection is a high traffic area where existing stop signs are not adequate for the present level of traffic volume.

We have prepared this assessment on behalf of the Federal Highway Administration (FHWA) to address federally listed threatened or endangered species under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS).

*Give names of listed species present:* The current USFWS listing of species under its jurisdiction indicates the potential presence in the project area of threatened bull trout, marbled murrelet, northern spotted owl, gray wolf, grizzly bear, marsh sandwort, golden paintbrush and water howellia. Critical habitat for northern spotted owl and marbled murrelet has been designated in the county, and critical habitat has been proposed for bull trout.

The possible presence of listed species in the project area was further evaluated by reviewing Washington Department of Fish and Wildlife (WDFW) Priority Habitats and Species (PHS) data, WDFW Wildlife Heritage data set, WDFW Stock Inventory data, and the Washington Department of Natural Resources (WDNR) Natural Heritage Program rare plant data.

*Describe project location:* The proposed project is located on the Kitsap Peninsula, in Pierce County, Washington on SR 302 from milepost (MP) 10.51 to MP 10.63 (Township 22 North, Range 1 East, Sections 20 and 29). The project area will be within the developed road prism of SR 302 at the Elgin–Clifton intersection with the Gig Harbor-Longbranch Highway. The action

area for the project will be 0.25 miles around the project due to the increased noise and visual disturbance during construction.

*Describe project activities:* Proposed work includes installation of a traffic light and signal box, and trenching of conduit. All work will occur in the existing road right of way. The signal box will most likely be located in the traffic island due to ease of access for future maintenance. Any vegetation to be removed for signal box installation, signal placement, and conduit trenching will consist of nonnative blackberries, Scot's broom, and roadside grasses. The concrete for the new signal will cure for approximately 30 days. New impervious surface will be minimal (approximately 32 square feet) for the signal box. Pavement will then be overlaid, restriped, and signage upgraded. The pavement overlay will include grinding at the abutment to existing pavement before the pavement overlay.

To repair a failing shoulder, an existing cross-culvert will be cut and extended approximately 10 feet. This will involve removal of minor amounts of salal and roadside grasses. Approximately 10 cubic yards of fill will be added to the shoulder to repair the roadbed, and bring the shoulder to standard, before the pavement overlay. All work will take place from the existing roadway, and the final shoulder will match the original road prism. Traffic may be detoured approximately 0.5 miles around the intersection from SR 302 to 134th Road (a road that receives heavy traffic under normal conditions) during the second phase for up to 2 nights.

*Describe construction schedule:* Construction is scheduled to begin in June 2005 and will be completed by September 2005. Actual workdays for the project will be approximately 2 days for the first phase of the project, and approximately 2 days for second phase of the project.

*Describe land use in the vicinity:* Land use in the vicinity of the project area is low-density rural residential, managed timberland, and some commercial buildings along the detour route. Noise levels are relatively high due to the high traffic volumes associated with the intersection.

*Describe habitat present as it relates to threatened and endangered species:* Overstory vegetation near the roadway is comprised primarily of second growth Douglas fir with some red and madrone. Understory vegetation near the roadway consists of nonnative Scot's broom, Himalayan blackberry, and roadside grasses. Swordfern, evergreen huckleberry, and salal also occur in the project area. A traffic island, located at the intersection of the project, contains roadside grasses and Scot's broom. Residential ornamental vegetation and lawns are located off the roadway corridor in the action area.

*Describe availability of suitable habitat:* WSDOT biologists visited the project area on date to determine the status and availability of suitable habitat for listed species in the project area and to evaluate any potential impacts of the proposed project. Water howellia and marsh sandwort occur in wetland habitats. Potential suitable habitat may exist for water howellia and marsh sandwort in wetland areas present outside the project work area in the action area. The project will not disturb or alter wetland areas, hydrology will not be altered, and only minimal new impervious surface will be created. Therefore, the project will have no effect on water howellia or marsh sandwort.

There are no streams within 0.25 miles of the project. Therefore, no suitable habitat exists for bull trout in the action area. There are no mature forests within 0.25 miles of the project that contain habitat elements suitable for either northern spotted owl or marbled murrelet. The action area does not contain any prairie habitat that would be suitable for golden paintbrush. Gray wolf and grizzly bear suitable habitat may occur in the eastern Pierce County, but not on the Kitsap Peninsula in western Pierce County. Therefore, the project will have *no effect* on bull trout, northern spotted owl, marbled murrelet, golden paintbrush, gray wolf, or grizzly bear.

The project action area does not contain designated critical habitat for northern spotted owl and marbled murrelet or proposed critical habitat for bull trout. Therefore, the project will have *no effect* on critical habitat for northern spotted owl, marbled murrelet, or proposed critical habitat for bull trout.

This assessment satisfies the *title of action agency's* responsibilities under Section 7(c) of the Endangered Species Act at this time. We are sending you this copy of our assessment for your files. We will continue to remain aware of any change in status of these species and will be prepared to reevaluate potential project impacts if necessary.

Please call *name of project biologist* (WSDOT, *telephone number*) if you require additional information or if you have any questions about this project.

Sincerely,

*Name of biology program manager*

*Title of biology program manager*

Enclosures:            *Vicinity and site maps, photos, and USFWS species listing*

cc w/enclosures:    *Name of regional environmental manager, WSDOT region*  
*Name of regional biology branch manager, WSDOT region*  
*Corps liaison (if this is a FHWA project requiring a Corps permit)*

**19.1.1.2 Example 2: No-Effect Letter Submitted to the Federal Highway Administration for Species Under the Jurisdiction of NOAA Fisheries**

*Date*

*Name of area engineer*

Federal Highway Administration

*Region*

*Address*

Subject: No-effect Letter; SR 302, Elgin – Clifton Road Intersection, MP 10.51 to 10.63

WSDOT Project No. \_\_\_\_\_

Federal Aid No. \_\_\_\_\_

Dear *name of area engineer*:

*Describe project:* The Washington State Department of Transportation (WSDOT) is proposing to improve safety at a high accident location by installing a traffic signal with possible illumination, repairing a failing shoulder, upgrading associated signs, repaving, and restriping the intersection of State Route (SR) 302 at the Elgin–Clifton road intersection. The intersection is a high traffic area where existing stop signs are not adequate for present traffic volumes. We have prepared this assessment on behalf of the Federal Highway Administration (FHWA) to address federally listed species under the jurisdiction of the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries).

*Describe listed species present:* NOAA Fisheries provides listings of threatened and endangered species under its jurisdiction. The current listing indicates the potential presence of the Puget Sound evolutionarily significant unit (ESU) of Chinook salmon in the project area. In addition, designation of critical habitat for Puget Sound ESU Chinook salmon has been proposed in the project action area.

*Describe project location:* The proposed project is located on the Kitsap Peninsula in Pierce County, Washington, on SR 302 from milepost (MP) 10.51 to MP 10.63 (Township 22 North, Range 1 East, Sections 20 and 29). The project area will be within the developed road prism of SR 302 at the Elgin–Clifton intersection with the Gig Harbor-Longbranch Highway. The action area for the project will be 0.25 miles around the project footprint due to the potential for increased noise and visual disturbance during construction.

*Describe project activities:* Proposed work includes installation of a traffic light and signal box, and trenching of conduit. All work will occur within the existing road right-of-way. The signal box will most likely be located in the traffic island due to ease of access for future maintenance.

Any vegetation to be removed for signal box installation, signal placement, and conduit trenching will consist of nonnative blackberries, Scot's broom, and roadside grasses. The concrete for the new signal will cure for approximately 30 days. New impervious surface will be minimal (approximately 32 square feet) for the signal box. Pavement will then be overlaid and restriped, and signage will be upgraded. The pavement overlay will include grinding at the abutment to existing pavement before the pavement overlay.

To repair a failing road shoulder, an existing cross-culvert will be cut and extended approximately 10 feet. This will involve removal of minor amounts of salal and roadside grasses. Approximately 10 cubic yards of fill will be added to the shoulder to repair the roadbed, and bring the shoulder to standard, before the pavement overlay. All work will take place from the existing roadway, and the final shoulder will match the original road prism. Traffic may be detoured approximately 0.5 miles around the intersection from SR 302 to 134th Road during the second phase for up to 2 nights.

*Describe construction schedule:* Construction is scheduled to begin in June 2005 and will be completed by September 2005. Actual workdays for the project will be approximately 2 days for the first phase of the project, and approximately 2 days for second phase of the project.

*Describe land use in the vicinity:* Land use in the vicinity of the project area is low-density rural residential, managed timberland, and some commercial buildings along the detour route. Noise levels are relatively high due to the high traffic volumes associated with the intersection.

*Describe habitat present as it relates to threatened and endangered species:* WSDOT biologists visited the project area on *date* to determine the status and availability of suitable habitat for listed species in the project area and to evaluate any potential impacts of the proposed project. The project does not involve any work in or near aquatic habitats and creates minimal new nonpolluting impervious surface.

Therefore, the project will have *no effect* on Puget Sound ESU Chinook salmon. The project *will not destroy or adversely modify* proposed critical habitat for Puget Sound ESU Chinook salmon. If proposed critical habitat is designated for Puget Sound ESU Chinook salmon prior to completion of the project, the project will have *no effect* on Puget Sound ESU Chinook critical habitat.

This assessment satisfies the *title of action agency's* responsibilities under Section 7(c) of the Endangered Species Act at this time. We are sending you this copy of our assessment for your files. We will continue to remain aware of any change in status of these species and will be prepared to reevaluate potential project impacts if necessary.

In compliance with the Magnuson-Stevens Fishery Conservation and Management Act, essential fish habitat (EFH) was assessed for the project. It was determined that the project will not have an adverse effect on EFH.

Please call *name of project biologist* (WSDOT, *telephone number*) if you require additional information or if you have any questions about this project.

Sincerely,

*Name of biology program manager*

*Title of biology program manager*

Enclosures: *Vicinity and site maps, photos, and NOAA species listing*

cc w/enclosures: *Name of regional environmental manager, WSDOT region*  
*Name of regional biology branch manager, WSDOT region*  
*Corps liaison (if this is a FHWA project requiring a Corps permit)*

### 19.1.2 No-Effect Letter Review Checklist

Typically, the no-effect letter (NEL) should be two to three pages in length, depending on the complexity of the proposed action. The purpose of the NEL is to document and support the no-effect determination(s). The focus of a NEL should be a brief but complete project description, species habitat and occurrence information, analysis of project impacts, and justification for the no-effect determination. To ensure that no effect letters contain the required information and the appropriate level of detail, WSDOT has developed a no-effect letter checklist for its reviewers that can also be used proactively by authors to develop no effect letters that meet WSDOT expectations. The checklist is available on WSDOT's website at: <<http://www.wsdot.wa.gov/Environment/Biology/BA/BAtemplates.htm>>.

### 19.1.3 No-Effect Assessment Template

The NE assessment template should be used for projects that result in a no effect determination but require additional documentation and analysis to support the NE determination, such as projects with new impervious surface (i.e., document lack of stormwater impacts), projects with complicated action areas, or projects that require completion of a detailed indirect effects analysis. The NE assessment is a 5 to 10 page report and includes appendices. The no-effect assessment template is available on the WSDOT Biology website at: <<http://www.wsdot.wa.gov/Environment/Biology/BA/BAtemplates.htm>>.

When developing the content for a no-effect assessment, refer to both the No-Effect Letter Checklist (provided above) and also to the WSDOT Biological Assessment Review Checklist (provided in Section 19.2.1 below) for guidance. The latest versions of all templates and review checklists are available on the WSDOT website referenced above.

## 19.2 Submitting a Biological Assessment

BA recipients, copy recipients, required attachments, and contacts for coordinating consultation for WSDOT projects are listed in Tables 19-1 and 19-2. A finished BA includes vicinity and site maps, and site photographs. Project diagrams are included when appropriate. A BA submitted to the USFWS must include a copy of the species list obtained from the USFWS (except programmatic BAs submitted by WSDOT biologists).

NMFS is now requesting that WSDOT projects potentially affecting **both** listed salmonids and marine mammals (i.e., southern resident killer whale and steller sea lion) submit two copies of the biological assessment for review. This policy stems from review procedures that have been initiated in the agency to address listed killer whales. One copy of the document will be reviewed by NMFS staff specializing in listed salmonids, and the second copy of the document will be reviewed by staff specializing in marine mammals.

A nonfederal agency (such as WSDOT) that is named by a federal action agency as its nonfederal designee may submit a BA for informal consultation. Section 19.2.2 provides example cover letters for initiating informal consultation with the Services. For WSDOT, only the Army Corps of Engineers and Federal Highway Administration have named WSDOT as a federal designee. Therefore, when other federal agencies are the lead action agencies (such as the Forest Service, Federal Transit Authority, Federal Railway Administration or National Parks), the following transmittal procedures may not apply. Contact the agency directly on their procedures.

Formal consultation packages are submitted to the Service(s) by the federal action agency. For a formal consultation where FHWA is the lead action agency, WSDOT mails a hard copy of the BA along with a cover letter (19.2.3.1) providing the project number, project description, and effect determinations to the Area Engineer. In addition, send an electronic message requesting BA transmittal to the Area Engineer, Environmental Program Manager and Field Operations Team Leader. The email should contain the BA and a draft letter to the applicable Service(s). Examples of the FHWA draft transmittal letters are provided in Sections 19.2.3.2 – 19.2.3.4.

If a project is conducted by FHWA and requires a permit from the Corps of Engineers, the Corps receives a copy of the BA.

### **19.2.1 Biological Assessment Template and Review Checklist**

A biological assessment should be prepared for projects that result in a not likely to adversely affect (NLTA) and/or adversely affect (AA) determination. A biological assessment template is available on the WSDOT Biology website. The WSDOT Biological Assessment Review Checklist is available on-line at:

<http://www.wsdot.wa.gov/Environment/Biology/BA/BAtemplates.htm#BA>.

## 19.2.2 Informal Consultation

### 19.2.2.1 Example of Cover Letter for Initiating Informal Consultation with the U.S. Fish and Wildlife Service

Date

Name of current manager

**U.S. Fish and Wildlife Service**

Address for western Washington USFWS office or Spokane field office

Subject: Biological Assessment for SR 105 North Cove Erosion Protection, MP 20.15 to 20.49

WSDOT Project No. \_\_\_\_\_

Federal Aid No. \_\_\_\_\_

Dear *name of current manager*:

The Washington State Department of Transportation (WSDOT), on behalf of the Federal Highway Administration (FHWA) is planning to complete an erosion protection project on SR 105 this winter. The project is located on SR 105 from milepost (MP) 20.15 to MP 20.49, along the edge of Willapa Bay in Pacific County (T14N R14W S04). The project includes funding from the FHWA. Therefore, it is subject to requirements under Section 7(c) of the Endangered Species Act.

*If the project has been presented at a pre-BA meeting with the Services, include this following paragraph:* This project was presented at a pre-biological assessment meeting with the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries) on *date*. In attendance were *names of attendees* from the USFWS and *names of attendees* from NOAA Fisheries.

*Give names of species assessed:* The enclosed biological assessment analyzes potential impacts of the proposed project on brown pelican, bull trout, marbled murrelet, northern spotted owl, Oregon silverspot butterfly, short-tailed albatross, western snowy plover, and green, leatherback, loggerhead and olive ridley sea turtles, as well as western snowy plover critical habitat, marbled murrelet critical habitat, and proposed critical habitat for bull trout.

*State BA conclusions:* The biological assessment concludes that the project *may affect is not likely to adversely affect* marbled murrelet, and will have *no effect* on brown pelican; northern spotted owl; Oregon silverspot butterfly; short-tailed albatross; western snowy plover; green, leatherback, loggerhead, and olive ridley sea turtles; critical habitat for western snowy plover and marbled murrelet; and proposed critical habitat for bull trout. We have determined that this project *will not destroy or adversely modify* bull trout critical habitat. However, if bull trout critical habitat becomes designated prior to completion of the project, the project will have *no effect* on bull trout critical habitat.

It is our understanding that with federal concurrence this satisfies our responsibilities under Section 7(c) of the Endangered Species Act at this time. We will continue to remain aware of any change in status of these species and will be prepared to reevaluate potential project impacts if necessary.

Please contact *project biologist name* at *telephone number* if you require additional information or if you have any questions about this project.

Sincerely,

*Name of biology program manager*

*Title of biology program manager*

Enclosure: Biological assessment

cc: w/ enclosure:     *Name of regional environmental manager, WSDOT region*  
                              *Name of regional biology branch manager, WSDOT region*  
                              Area engineer, FHWA  
                              *Corps liaison (if this is an FHWA project requiring a Corps permit)*

### 19.2.2.2 Example of Cover Letter for Initiating Informal Consultation with NOAA Fisheries

Date

Washington State Director for Habitat Conservation  
NOAA Fisheries  
Habitat Program/Olympia Field Office  
510 Desmond Drive SE, Suite 103  
Lacey, Washington 98503-1273

Subject: Biological Assessment for SR 105 North Cove Erosion Protection, MP 20.15 to 20.49  
WSDOT Project No. \_\_\_\_\_  
Federal Aid No. \_\_\_\_\_

Dear *name of current director*:

The Washington State Department of Transportation (WSDOT), on behalf of the Federal Highway Administration (FHWA), is planning to complete an erosion protection project on SR 105 this winter. The project is located on SR 105 from milepost (MP) 20.15 to MP 20.49, along the edge of Willapa Bay in Pacific County (T14N R14W S04). The project includes funding from the FHWA. Therefore, it is subject to requirements under Section 7(c) of the Endangered Species Act.

*If the project has been presented at a pre-BA meeting with the Services, include this paragraph:*  
This project was presented at a pre-biological assessment meeting with the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries) and the U.S. Fish and Wildlife Service (USFWS) on *date*. In attendance were *names of attendees* from NOAA Fisheries and *names of attendees* from USFWS.

The enclosed biological assessment analyzes potential impacts of the proposed project on Steller sea lion and green, leatherback, loggerhead, and olive ridley sea turtles, as required under Section 7(c) of the Endangered Species Act.

The biological assessment concludes that the project *may affect but is not likely to adversely affect* Steller sea lions, and will have *no effect* on sea turtles. Southern resident killer whales are proposed for listing as threatened under the Endangered Species Act.

We have determined that this project *will not jeopardize the continued existence of* southern resident killer whales. However, if southern resident killer whales become listed prior to completion of the project, the project *may affect but is not likely to adversely affect* southern resident killer whales.

Therefore, WSDOT is requesting informal consultation on Steller sea lions and informal conference on southern resident killer whales.

It is our understanding that with federal concurrence this satisfies our responsibilities under Section 7(c) of the Endangered Species Act at this time. We will continue to remain aware of any change in status of these species and will be prepared to reevaluate potential project impacts if necessary.

In compliance with the Magnuson-Stevens Fishery Conservation and Management Act, essential fish habitat (EFH) was assessed for the project. It was determined; the project *will not have an adverse effect on EFH*.

Please contact *name of project biologist* at *telephone number* if you require additional information or have any questions about this project.

Sincerely,

*Name of biology program manager*  
*Title of biology program manager*

Enclosure: Biological assessment

cc: w/ enclosure:     *Name of environmental manager, WSDOT region*  
                              *Name of regional biology branch manager, WSDOT region*  
                              *Name of area engineer, FHWA*  
                              *Corps liaison (if this is an FHWA project requiring a Corps permit)*

### 19.2.3 Formal Consultation

#### 19.2.3.1 Example of Cover Letter provided by WSDOT to a Federal Action Agency for Its Initiation of Formal Consultation with the U.S. Fish and Wildlife Service or NOAA Fisheries

The federal action agency (FHWA or Corps of Engineers) initiates formal consultation with the Services. WSDOT provides the federal action agency with a formal draft cover letter (below) containing a project description and the effect determinations for transmittal to the Services:

Date \_\_\_\_\_

Subject: Biological assessment for SR 105 to Grays Harbor County Line bridge replacement,  
Milepost \_\_\_\_\_  
Federal Aid No. \_\_\_\_\_  
WSDOT Project No. \_\_\_\_\_

The Federal Highway Administration (FHWA) is providing funds to the Washington State Department of Transportation (WSDOT) to ... *or*

The U.S. Army Corps of Engineers is issuing a permit to the Washington State Department of Transportation (WSDOT) to ...

conduct a bridge replacement project on State Route 105 in Pacific County, Washington. The project is located on SR 105 from MP 20.15 to MP 26.49, in Pacific County (T14N R14W).

The project will replace the super structure of an existing bridge (bridge platform, supports, rails, roadway and striping) but will make use of existing piles and bridge foundations and requires no in-water work. The project is scheduled between June 15, 2005 and July 15, 2005. A total of 1 month will be required to complete work.

The enclosed biological assessment was prepared on our behalf by WSDOT for listed species as required under Section 7(c) of the Endangered Species Act. The biological assessment concludes that the project *may affect and is likely to adversely affect* marbled murrelet as a result of the proposed construction activities in close proximity to unsurveyed suitable marbled murrelet nesting habitat. Additionally, the biological assessment concludes that the proposed project will have *no effect* on marbled murrelet critical habitat, western snowy plover critical habitat, and Oregon silverspot butterfly; and *may affect but is not likely to adversely affect* bull trout, brown pelican, northern spotted owl, and western snowy plover.

Therefore, we are requesting formal consultation on the marbled murrelet, and informal consultation on bull trout, brown pelican, northern spotted owl, and western snowy plover.

It is our understanding that following the completion of formal consultation on marbled murrelet, and receiving concurrence on bull trout, brown pelican, northern spotted owl, and western snowy plover, our responsibilities under Section 7(c) of the Endangered Species Act will be satisfied.

Please contact *name of project biologist* (WSDOT telephone number) if you require additional information or have any questions about this project.

cc:    *Name of environmental manager, WSDOT region*  
      *Name of area engineer, WSDOT region, title of area engineer*  
      *Name of regional biology branch manager, WSDOT*  
      *Corps liaison (if this is an FHWA project requiring a Corps permit)*

**19.2.3.2 Draft Letter for FHWA to Initiate Formal Consultation with the Eastern Washington U.S. Fish and Wildlife Service Field Office**

*Date*

Mark Miller  
United States Fish and Wildlife Service  
11103 E. Montgomery Drive, Suite 2  
Spokane, WA 99206

[*Project Name*] Request for Formal  
Consultation with USFWS

Dear Mr. Miller:

The Federal Highway Administration (FHWA), as the lead Federal agency, is submitting this request for formal consultation with US Fish and Wildlife Service (USFWS), as required under Section 7(a)(2) of the Endangered Species Act (as amended). FHWA is providing the enclosed Biological Assessment.

Project activities [*insert description of project activities*].

Construction is tentatively scheduled to begin in [*insert month and year*] and be completed in [*insert month and year*], at total of approximately [*insert number*] months or approximately [*insert number*] working days.

In regards to species under the jurisdiction of USFWS, FHWA has concluded that the proposed project **May Affect, and is Likely to Adversely Affect** [*insert species*], [*include all other species and affect calls for the project*]

FHWA is requesting formal consultation as allowed by 51 CFR 402.12(j). With submittal of this BA, FHWA has provided USFWS with all the best scientific and commercial data available concerning the impact of the proposed project on listed species.

FHWA understands that, as stipulated in ESA Section 7(b)(1)(A) and 50 CFR 402.14(e), formal consultation will be initiated by your receipt of this formal consultation request, and will conclude within 90 days from that date. We look forward to receiving a letter from you in 30 days concurring with our effect determinations. If no letter is received we will assume that you are in concurrence with the effect determinations. Additionally, we understand that a Biological Opinion will be prepared by USFWS within 45 days of completing the consultation period. FHWA request copies of the draft Biological Opinion, incidental take statement, terms and conditions, and reasonable and prudent measures for review prior to USFWS finalizing the Biological Opinion.

Enclosed are both a hard copy and an electronic version of the biological assessment. [*edit as necessary*]

If you have any questions about this project, or need additional clarification, please contact [*insert your name*], FHWA Area Engineer, at [*insert your phone number*].

[*Signed by Area Engineer*]

cc:    *Name of environmental manager, WSDOT region*  
      *Name of area engineer, WSDOT region, title of area engineer*  
      *Name of regional biology branch manager, WSDOT*  
      *Corps liaison (if this is an FHWA project requiring a Corps permit)*

**19.2.3.3 Draft Letter for FHWA to Initiate Formal Consultation with the Western Washington U.S. Fish and Wildlife Service Office**

*Date*

Ken Berg  
United States Fish and Wildlife Service  
510 Desmond Drive SE, Suite 102  
Lacey, Washington 98503

[*Project Name*] Request for Formal  
Consultation with USFWS

Dear Mr. Berg:

The Federal Highway Administration (FHWA), as the lead Federal agency, is submitting this request for formal consultation with US Fish and Wildlife Service (USFWS), as required under Section 7(a)(2) of the Endangered Species Act (as amended). FHWA is providing the enclosed Biological Assessment.

Project activities [*insert description of project activities*].

Construction is tentatively scheduled to begin in [*insert month and year*] and be completed in [*insert month and year*], at total of approximately [*insert number*] months or approximately [*insert number*] working days.

In regards to species under the jurisdiction of USFWS, FHWA has concluded that the proposed project **May Affect, and is Likely to Adversely Affect** [*insert species*], [*include all other species and affect calls for the project*]

FHWA is requesting formal consultation as allowed by 51 CFR 402.12(j). With submittal of this BA, FHWA has provided USFWS with all the best scientific and commercial data available concerning the impact of the proposed project on listed species.

FHWA understands that, as stipulated in ESA Section 7(b)(1)(A) and 50 CFR 402.14(e), formal consultation will be initiated by your receipt of this formal consultation request, and will conclude within 90 days from that date. We look forward to receiving a letter from you in 30 days concurring with our effect determinations. If no letter is received we will assume that you are in concurrence with the effect determinations. Additionally, we understand that a Biological Opinion will be prepared by USFWS within 45 days of completing the consultation period. FHWA request copies of the draft Biological Opinion, incidental take statement, terms and conditions, and reasonable and prudent measures for review prior to USFWS finalizing the Biological Opinion.

Enclosed are both a hard copy and an electronic version of the biological assessment. [*edit as necessary*]

If you have any questions about this project, or need additional clarification, please contact [*insert your name*], FHWA Area Engineer, at [*insert your phone number*].

[*Signed by Area Engineer*]

cc:    *Name of environmental manager, WSDOT region*  
      *Name of area engineer, WSDOT region, title of area engineer*  
      *Name of regional biology branch manager, WSDOT*  
      *Corps liaison (if this is an FHWA project requiring a Corps permit)*

**19.2.3.4 Draft Letter for FHWA to Initiate Formal Consultation with the National Marine Fisheries Service**

*Date*

Steve Landino  
National Marine Fisheries Service  
510 Desmond Drive SE, Suite 103  
Lacey, Washington 98503

[*Project Name*] Request for Formal  
Consultation with USFWS

Dear Mr. Landino:

The Federal Highway Administration (FHWA), as the lead Federal agency, is submitting this request for formal consultation with the National Marine Fisheries Service (NMFS), as required under Section 7(a)(2) of the Endangered Species Act (as amended). FHWA is providing the enclosed Biological Assessment.

Project activities [*insert description of project activities*].

Construction is tentatively scheduled to begin in [*insert month and year*] and be completed in [*insert month and year*], at total of approximately [*insert number*] months or approximately [*insert number*] working days.

In regards to species under the jurisdiction of USFWS, FHWA has concluded that the proposed project **May Affect, and is Likely to Adversely Affect** [*insert species*], [*include all other species and affect calls for the project*]

FHWA is requesting formal consultation as allowed by 51 CFR 402.12(j). With submittal of this BA, FHWA has provided USFWS with all the best scientific and commercial data available concerning the impact of the proposed project on listed species.

FHWA understands that, as stipulated in ESA Section 7(b)(1)(A) and 50 CFR 402.14(e), formal consultation will be initiated by your receipt of this formal consultation request, and will conclude within 90 days from that date. We look forward to receiving a letter from you in 30 days concurring with our effect determinations. If no letter is received we will assume that you are in concurrence with the effect determinations. Additionally, we understand that a Biological Opinion will be prepared by USFWS within 45 days of completing the consultation period. FHWA request copies of the draft Biological Opinion, incidental take statement, terms and conditions, and reasonable and prudent measures for review prior to USFWS finalizing the Biological Opinion.

Enclosed are both a hard copy and an electronic version of the biological assessment. [*edit as necessary*]

If you have any questions about this project, or need additional clarification, please contact [*insert your name*], FHWA Area Engineer, at [*insert your phone number*].

[*Signed by Area Engineer*]

cc:    *Name of environmental manager, WSDOT region*  
      *Name of area engineer, WSDOT region, title of area engineer*  
      *Name of regional biology branch manager, WSDOT*  
      *Corps liaison (if this is an FHWA project requiring a Corps permit)*