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Testimony

Before the Subcommittee on Fisheries,  
Wildlife, and Water, Committee on  
Environment and Public Works,  
United States Senate

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## ENDANGERED SPECIES

# Despite Consultation Improvement Efforts in the Pacific Northwest, Concerns Persist about the Process

Statement of Barry T. Hill, Director  
Natural Resources and Environment



G A O

Accountability \* Integrity \* Reliability

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Highlights of [GAO-03-949T](#), a testimony before the Subcommittee on Fisheries, Wildlife, and Water, Senate Committee on Environment and Public Works

## Why GAO Did This Study

The Endangered Species Act requires all federal agencies to consult with the Fish and Wildlife Service or the National Marine Fisheries Service (the Services) to determine the effect that the activities they conduct, permit, or fund may have on threatened or endangered species. In particular, federal agencies (action agencies) must ensure that their activities do not jeopardize the continued existence of any listed species or adversely modify critical habitat. After several fish species in the Pacific Northwest were listed in the late 1990s, the Services' consultation workload increased significantly in Idaho, Oregon, and Washington, and the Services were unable to keep up with requests for consultation. As a result, many proposed activities were delayed for months or years. Even under normal workload conditions, the consultation process can be difficult, in part because decisions about how species will be protected must often be made with uncertain scientific information using professional judgment.

This testimony is based on ongoing work requested by the Chairman of the Senate Subcommittee on Fisheries, Wildlife, and Water. It addresses (1) efforts to improve the consultation process, by the Services and by four action agencies in Idaho, Oregon, and Washington; and (2) concerns with the process expressed by officials at the Services and action agencies, and by nonfederal parties.

[www.gao.gov/cgi-bin/getrpt?GAO-03-949T](http://www.gao.gov/cgi-bin/getrpt?GAO-03-949T).

To view the full testimony, including the scope and methodology, click on the link above. For more information, contact Barry T. Hill at (202) 512-3841 or [hillbt@gao.gov](mailto:hillbt@gao.gov).

## ENDANGERED SPECIES

### Despite Consultation Improvement Efforts in the Pacific Northwest, Concerns Persist about the Process

#### What GAO Found

The Services and four action agencies in the Pacific Northwest have taken a number of actions to improve the efficiency of the consultation process. For example, the Services have increased their staff levels in some offices, and the National Marine Fisheries Service has opened additional offices to facilitate consultations at remote locations. The Services have also increased their use of consultations that cover multiple activities that are similar in nature, thus minimizing the need to consult on individual activities. Another improvement, called streamlining, uses interagency teams that work together on multiple activities; these teams work to improve communication, reach agreement on the potential effects of activities early in the process, and resolve problems that arise to ensure that proposed activities will not negatively affect listed species. In addition, the Services and the action agencies have worked, both individually and together, to develop and refine additional guidance and training for staff conducting consultations.

Despite the improvement efforts, Service and action-agency officials, as well as nonfederal parties, continue to have concerns with the consultation process. A key problem that lengthens the consultation process is the lack of a shared understanding between the Services and action agencies on what constitutes a complete biological assessment. According to Service and action-agency officials, this can lead the Services to make multiple requests for information from the action agencies about an activity until the Services are confident that a biological assessment adequately addresses the effects of the proposed activity on the species. Multiple requests for information are also sometimes due to Service biologists' being unfamiliar with action-agency programs, partly owing to high staff turnover. In addition, action-agency officials noted that the Services and the action agencies attempt to ensure that biological assessments are "bullet proof" by making them so comprehensive that they will be immune to any legal challenges. Action-agency officials also expressed a concern that Service and action-agency roles are not clearly defined. For example, according to action-agency officials, Service officials sometimes make judgments about whether an activity should occur or how it should occur, rather than just judging its potential effects on species. In response, Service officials commented that the purpose of the consultation process is to discuss the potential effects of proposed actions early in the planning process and to explore options that will avoid jeopardy. Service and action-agency officials also identified a lack of sufficient resources—particularly at the Services—as a key concern, stating that staff-level increases have not kept pace with their growing workloads. Among the nonfederal parties, permit applicants expressed concerns about the time and expense required for the consultation process. Environmental groups said land management decision-making processes, such as consultation, are often closed to them until after final decisions are made, and that the only way they can make their voices heard is through administrative appeals and lawsuits.

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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss preliminary results from our ongoing review of the consultation process required by the federal Endangered Species Act, particularly as applied in the Pacific Northwest. Under the act, before federal agencies may conduct, permit, or fund activities in areas where species listed as threatened or endangered may be present, the agencies must consult with the Department of the Interior's Fish and Wildlife Service or the Department of Commerce's National Marine Fisheries Service (the Services). Such consultation is intended to allow federal agencies to ensure that the activities are not likely to jeopardize the species' continued existence or adversely modify their critical habitat. Consultation has particularly significant effects in the Pacific Northwest because numerous species there are threatened with extinction, including the Northern spotted owl, various salmon species, and the bull trout.

Federal activities that agencies may need to consult about in the Pacific Northwest range from operating hydroelectric dams on the Columbia River—which provide about 60 percent of the federal electricity-generating capacity in the region—to harvesting timber, to dredging navigation channels. Responsible agencies—or “action agencies”—include the Department of the Interior's Bureaus of Land Management and Reclamation, the Department of Agriculture's Forest Service, and the Army Corps of Engineers, to name a few. Typical nonfederal activities that these agencies permit, which may also require consultation, include grazing, timber harvesting, and mining on federal lands, and building structures such as piers and docks on private property. Nonfederal parties, such as private landowners, developers, or local governments, typically conduct these permitted activities.

If an action agency determines that an activity may affect a listed species, the agency may initiate either an informal or a formal consultation with the appropriate Service. In an informal consultation—which could be as simple as a brief telephone call—the Service and action agency may agree that the activity is unlikely to negatively affect the species and that formal consultation is not necessary. On the other hand, if the Service or agency initially believes or finds after informal consultation that the activity may have negative effects, the action agency initiates formal consultation by submitting a biological assessment on the activity and its potential effects. If negative effects appear likely and formal consultation is required, the Service has 135 days to formally consult and document, in a biological opinion, whether the activity could jeopardize the species' continued

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existence and what actions, if any, are required to mitigate those effects. (See app. I for a flowchart depicting the consultation process.) Avoiding jeopardy caused by federally conducted or approved activities is important to achieving the overall purpose of the Endangered Species Act, which is to conserve species that are at risk of extinction.

Even under normal workload conditions, the consultation process can be difficult, in part because decisions about how species will be protected must often be based on uncertain scientific information and on professional judgment. Decisions resulting from consultations are sometimes challenged in lawsuits, and responding to the lawsuits can increase workload and delay activities. These problems were magnified in the late 1990s, after several fish species in the Pacific Northwest were listed as threatened or endangered. The new listings increased the Services' consultation workload significantly in Idaho, Washington, and Oregon, and the Services were unable to respond quickly. As a result, many activities that federal agencies proposed were delayed for months or years. Action agencies and others criticized the consultations as unduly burdensome.

Our testimony, which is based on ongoing work that you requested, addresses (1) key efforts to improve the consultation process in the Pacific Northwest and (2) concerns about the consultation process identified by officials from the Services and other federal agencies, and by nonfederal parties, including environmental advocacy groups. To gather their views on consultations, we administered a structured questionnaire to 61 officials with the Services and the Army Corps of Engineers, the Bureaus of Land Management and Reclamation, and the Forest Service in Idaho, Oregon, and Washington. We conducted 133 additional interviews with agency officials in headquarters and field offices and with nonfederal parties; we also visited various locations in the three states. Prior to issuing this testimony, we shared a preliminary draft with the agencies we reviewed and incorporated their comments as appropriate. We conducted our work in accordance with generally accepted government auditing standards. Our final report, which we anticipate issuing in late August 2003, will present additional information about the adequacy of agency databases that are used to maintain key information on individual consultations. Our report will also provide Service and action-agency perspectives on improvements made to the consultation process.

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## Summary

Efforts by the Services and action agencies to improve the consultation process have focused on increasing the number of staff that conduct

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consultations, improving the efficiency of the process, and providing additional training and guidance for consultation staff and nonfederal parties. For example, both of the Services have increased their staff levels in certain offices, and the National Marine Fisheries Service has established new offices, among other things, to facilitate consultations at remote locations. To improve efficiency, the Services have increased their use of consultations that address multiple activities, minimizing the need to consult on individual ones. For example, one consultation in western Oregon covers ten types of routine activities in three national forests and two Bureau of Land Management districts. Another improvement, called streamlining, uses interagency teams for consultations to improve communications among the Services and action agencies on multiple activities, get agreement on the potential effects of an activity faster, and help resolve problems that arise. Finally, the Services and the action agencies have worked, both individually and together, to develop and refine additional guidance and training for staff conducting consultations. Interagency efforts include refresher training on the streamlining process and development of Web sites that provide staff with preparation instructions for, and examples of, biological assessments and other key consultation documents.

Despite the improvement efforts, Service and action-agency officials, as well as nonfederal parties, continue to have concerns with the consultation process. A key problem that lengthens the consultation process is that the Services and action agencies do not always share an understanding of what constitutes a complete biological assessment. According to Service and action-agency officials, this can lead to multiple requests by the Services for information from the action agencies about an activity until the Service is satisfied that a biological assessment adequately assesses the effects of a proposed activity on listed species. Multiple requests for information also sometimes stem from Service biologists' unfamiliarity with action-agency programs, partly owing to high staff turnover. In addition, action-agency officials noted that the Services and the action agencies attempt to ensure that biological assessments are "bullet proof" by making them so comprehensive that they will be immune to any legal challenges. Action-agency officials also expressed a concern that Service and action-agency roles are not clearly defined. For example, according to action-agency officials, Service officials sometimes make judgments about whether an activity should occur or how it should occur, rather than simply judging its potential effects on species. In response, Service officials commented that the purpose of the consultation process is to discuss the potential effects of proposed actions early in the planning process and to explore options that will avoid jeopardy. Service and

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action-agency officials also identified a lack of sufficient resources—particularly at the Services—as a key concern, stating that staffing increases have not kept pace with their growing workloads. Among the nonfederal parties, permit applicants expressed concerns about the time and expense required for the consultation process. For example, the average permit processing time for 19 permits issued in 2002 for building private docks or for similar activities on Lake Washington (near Seattle) was about 2 years and added about \$10,000 to applicants’ costs. Environmental groups said land management decision-making processes, such as consultation, are often closed to them until after final decisions are made, and that the only way to make their voices heard is through administrative appeals and lawsuits.

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## Background

The Endangered Species Act prohibits the “taking” of any threatened or endangered species of animal and defines “take” as to harass, harm, pursue, shoot, wound, kill, trap, hunt, capture, or collect, or to attempt to engage in any such conduct. Federal agencies must comply with prohibitions against taking species listed as threatened or endangered and must consult with the Services to determine the effect, if any, that their activities may have on listed species. In particular, federal agencies must ensure that their activities do not jeopardize the continued existence of any listed species, or destroy or adversely modify habitat designated as critical for those species. If any proposed activities will jeopardize a species or adversely modify its critical habitat, the Services will identify alternatives to those activities.

The Fish and Wildlife Service and the National Marine Fisheries Service together have responsibility for implementing the Endangered Species Act. The Fish and Wildlife Service is responsible for the protection of terrestrial, or land-dwelling, and freshwater animal and plant species. Endangered or threatened terrestrial animals in the Pacific Northwest include the Northern spotted owl, the grizzly bear, and the Canada lynx. The Service also manages land in national wildlife refuges and, like other land-managing agencies, must consult with its own biologists in determining the effect of its activities on listed species. The National Marine Fisheries Service is responsible for the protection of ocean-dwelling species and anadromous species, such as salmon.<sup>1</sup>

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<sup>1</sup>Anadromous species live part of their lives in fresh water and part in saltwater.

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Several federal agencies manage land in the Pacific Northwest or conduct activities there, many of which require consultation under the Endangered Species Act.

- The Army Corps of Engineers (Corps) supports navigation of the nation's waterways by maintaining and improving channels. In Idaho, Oregon, and Washington, the Corps also operates 12 dams and reservoirs that provide flood control, generate hydroelectric power, protect fish and wildlife, and support recreation and other activities. In addition, the Corps issues permits to parties who wish to conduct activities in lakes, streams, and wetlands; these activities include dredging or filling waterways, and building structures ranging from docks and driveways to housing developments.
- The Bureau of Land Management manages about 28 million acres of federal land in Idaho, Oregon, and Washington. The agency issues permits for and manages such activities as livestock grazing, recreation, mining, and timber harvests; many of these activities require consultation.
- The Bureau of Reclamation's core mission is to deliver water and hydroelectric power throughout 17 western states. In the Pacific Northwest, it operates and maintains 28 dams and administers 54 reservoirs. Its primary activities that require consultation are dam construction, operation, and maintenance.
- The Forest Service manages about 45 million acres of national forest in Idaho, Oregon, and Washington. The agency issues permits for, manages, and must consult on activities such as timber harvesting; recreation; livestock grazing; mining; environmental restoration; and rights of way for road construction, ski areas, and access to private land.

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## Improvement Efforts Have Focused on Staffing Resources, Efficiency, Guidance, and Training

The Services and action agencies have increased the number of staff that conduct consultations. Specifically, the Fish and Wildlife Service increased the number of biologists in some of its offices in order to address their growing consultation workload. The National Marine Fisheries Service also increased staff levels at several offices, and opened several new field offices in 2001 to facilitate consultations at remote locations. Previously, the geographic distance between the locations made consultations difficult. In addition, some action agencies have found it useful to provide funding for one or more Service biologist positions to specifically work on, or give priority to, that action agency's consultations. For example, the Corps' Seattle district provides funding for a Fish and

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Wildlife Service biologist position. The district gives the Service a list of upcoming activities, and the Corps-funded Service biologist works on consultations for those activities.

To improve the efficiency of the consultation process, the Services have increased their use of consultations that address multiple activities, minimizing the need to consult on individual activities. These multiple-activity consultations, often referred to as programmatic, sometimes allow action agencies to approve activities that meet predetermined criteria without additional consultation. Programmatics may cover repetitive activities with similar effects, such as road and recreation trail maintenance, or a variety of activities affecting a particular area or group of species, such as forest fuels treatment, grazing, and watershed restoration projects conducted in bull trout habitat. Multiple-activity consultations may also cover these types of activities in a specific region, as in three western Oregon national forests and two Bureau of Land Management districts, where one consultation covers ten categories of routine activities.

Another improvement effort, streamlining, is intended to reduce the time spent on consultations by facilitating early planning, up-front coordination, and communication between the Services and action agencies. Under the streamlined process, officials work on interagency teams that meet regularly to discuss upcoming action-agency activities and review draft biological assessments. The belief is that with improved communication, more trust will develop between the Services and action agencies, and problems will be easier to resolve when they arise. Accordingly, for formal consultations that go through streamlining, the Services, the Bureau of Land Management, and the Forest Service set a goal of reducing the time allotted from the current legal requirement of 135 days to 60 days. Streamlining is currently used for most Bureau of Land Management and Forest Service activities in the Pacific Northwest. In addition, the Bureau of Land Management and the Forest Service are involved in a pilot process in some locations in Idaho and Oregon. In this process, the action agencies have been delegated the authority to certify that certain activities meeting pre-established criteria are unlikely to adversely affect listed species and can therefore proceed.

Both the Services and the action agencies have provided additional training and guidance to improve understanding of the consultation process and one another's roles and authority, including the following.



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- The Services have developed refresher training on the consultation process, have prepared guidance on how to prepare a high-quality biological assessment, and provide continuing professional education on evaluating the biological effects of proposed activities.
  - The Services, the Bureau of Land Management, and the Forest Service have developed an interagency Web site with links to the Endangered Species Act and its regulations and to guidance on streamlined consultation procedures. They plan to add examples of biological assessments and other documents as guidance for teams using streamlined procedures.
  - The National Marine Fisheries Service currently provides links on its Web site to biological opinions and to a tracking system that shows the status of consultations. The Service also plans to launch a separate Web site this year to provide guidance to action-agency biologists and others on preparing biological assessments.
  - The Army Corps of Engineers has developed Web sites to inform citizens about the permitting and consultation processes. These Web sites include instructions on applying for permits for activities such as pier and dock construction.

Several action-agency officials told us that they also sometimes use site visits to educate stakeholders (e.g., the Services, the action agency, and interested nonfederal parties) about a proposed activity. An Army Corps official, for example, said the Corps has taken Service biologists out on dredges to increase the biologists' understanding of dredging operations and their likely effect on species. In another example, a Forest Service biologist convened on-site meetings of all the stakeholders in a consultation about the proposed development plan for a ski area in Washington. These stakeholders (representatives of the Forest Service, the Fish and Wildlife Service, the ski area, the state, and a local hunting group) walked through the proposed development areas and discussed ways to prevent the development from adversely affecting the species involved. This on-site collaboration, according to the Forest Service biologist, gained agreement by all stakeholders on how the development could avoid adversely affecting listed species. It also may have forestalled litigation by the state and the local hunting group, which had previously opposed the proposed development plan.

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## Despite Improvement Efforts, Concerns Remain about Consultations

Despite ongoing efforts to improve consultations, Service and action-agency officials continue to have concerns about the consultation process. The absence of shared criteria for complete biological assessments, Service biologists' lack of knowledge about action-agency programs, and fear of litigation were frequently mentioned by Service and action-agency officials as significant concerns. In addition, according to some action-agency officials, Service and action-agency roles are not clearly defined, which leads to Service officials sometimes recommending changes to agencies' proposed activities beyond what action agencies think is necessary to minimize the negative effect on species. In response, Service officials commented that the purpose of the consultation process is to discuss the potential effects of proposed actions early in the planning process and to explore options that will avoid jeopardy. Service and action-agency officials were also concerned about a lack of sufficient resources, particularly at the Services. Among nonfederal parties, concerns were expressed about the time and cost required for consultations and about a perceived lack of openness and effectiveness in the consultation process.

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## Officials Do Not Have a Common Understanding of the Information Needed in Biological Assessments

A key problem that lengthens the consultation process is that the Services and action agencies do not always have an understanding of what constitutes a complete biological assessment—that is, one that provides sufficient scientific information to determine an activity's effect on a species. Because of this lack of common criteria, and because complete scientific information is rarely available for listed species, officials often rely on their judgment and experience to determine the likely effect of activities on species. Some Service officials we interviewed said that they often do not receive sufficiently detailed information from the agencies in a biological assessment about the activity so that they can independently assess its likely effects on the species. They therefore request additional information and do so until they are satisfied that the assessment adequately addresses the effects of the proposed activity on the species. On the other hand, some action-agency officials said they believe that the Services require much more detailed information than is necessary to determine whether they agree with the action agency's assessment of the activity's effects. Many Service and action-agency officials said that these requests for additional information and associated discussions can delay the consultation process and cause frustration.

Disagreements over the detail needed in biological assessments are exacerbated because many officials perceive the consultation process as personality-driven. Specifically, Service and action-agency officials said

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that sometimes officials on both sides of the issue take unyielding positions on consultations, either on behalf of the activity or the listed species, and they waste time arguing. In these instances, the process takes much longer to complete than when participants are able to compromise. In addition, action-agency officials said some Service biologists—particularly new ones—can be overly zealous in their efforts to protect species and may be unlikely to compromise; at the same time, action agencies do not always involve the Services early enough in consultation, making the process difficult. In other cases, officials told us that some individuals that are key to the consultation process lack the interpersonal or negotiation skills necessary to resolve conflicts that arise in the process. One action-agency official noted, “there is no room in the process for zealots—on either side.”

National Marine Fisheries Service officials recognize the need for better guidance regarding the level of detail required in biological assessments and are developing training for their biologists, along with a Web-based template and checklist for action agencies. Service officials told us that they believe deadlocked disagreements over biological assessments are less common than they used to be, and when they do occur it is sometimes because issues are not elevated to management for resolution when they should be. Furthermore, they believe that increased staff, planning, and field offices have helped alleviate these issues.

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### Service Biologists Are Unfamiliar with Action-Agency Programs

Service and action-agency officials agreed that Service biologists are sometimes unfamiliar with action-agency programs and activities and that the time required for Service biologists to learn about activities and how they may negatively affect species can lengthen the consultation process. High turnover among Service biologists is one factor that contributes to their lack of familiarity with action-agency activities. In one example, Service biologists did not understand the process of mining for gold in streams until they were given a field demonstration. Allowing the Service biologists to see the mining equipment in operation helped facilitate the consultation process because the biologists did not have to ask numerous clarifying questions to understand the activity’s potential impact. Although site visits can help familiarize biologists with action-agency activities, because of resource limitations, Service and action-agency officials said they are unable to make site visits a routine part of consultation.

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## Service and Action-Agency Officials Are Concerned about Litigation

Service and action-agency officials alike cited the fear of litigation as a significant concern that lengthens the consultation process. Since 1999, the Services have been affected by at least 19 lawsuits involving consultations in courts with jurisdiction in Idaho, Oregon, and Washington. For example, according to a Forest Service official in Oregon, at least two dozen timber projects have awaited consultation for 2 years because a court ruled that the National Marine Fisheries Service used insufficient scientific data to support a determination that natural vegetation growth would adequately mitigate the effects of logging.<sup>2</sup> This decision invalidated more than 20 existing biological opinions for timber harvests, which will await formal consultation until the National Marine Fisheries Service implements a strategy for addressing the court's concerns. In addition, both Services must respond to notices of lawsuits and agreements that settle lawsuits.

According to action-agency officials, such court rulings have led Service officials to apply the same level of scrutiny to all activities, regardless of the level of risk they pose to listed species. Action-agency officials believe that the Services attempt to ensure that all biological assessments are "bullet proof"—or so comprehensive that they are impervious to legal challenge—and this adds to the time and cost of consultation. As a result, Service officials apply similar scrutiny to activities that are less likely to have long-term negative impacts, such as trail maintenance or habitat restoration, as they do to activities with much higher potential for long-term negative effects, such as mining. Some action-agency officials recognized that this fear of litigation similarly causes them to put more details in their biological assessments than they otherwise would. Furthermore, Interior officials expressed concerns that existing litigation, and the risk of future litigation, may be interfering with the consultation process and diverting to litigation a disproportionate amount of the funds intended for Endangered Species Act implementation.

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## Service and Action-Agency Roles in Consultations Are Not Clearly Defined

According to action-agency officials, Service and action-agency roles are not clearly defined. Some action-agency officials expressed concern that Service biologists sometimes make judgments about whether an activity should occur, rather than just its potential effects on species. Action-agency officials told us they believe decisions about activities' design

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<sup>2</sup>*Pacific Coast Federation of Fishermen's Associations v. National Marine Fisheries Service*, 265 F.3d 1028 (9th Cir. 2001).

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should be left to the action agencies. The Department of the Interior's Assistant Secretary for Water and Science recently discussed this concern in an address to Bureau of Reclamation employees. The Assistant Secretary asserted that it is the Bureau's responsibility to determine how its proposed activities should be designed and the Services' responsibility to issue biological opinions on those activities' potential impact on species. He emphasized that the Bureau should not include components in its proposed activities that it believes are not necessary for avoiding negative effects to listed species, simply because the Services want those components included. The Bureau's Commissioner also issued a policy statement reiterating the Assistant Secretary's position that it is the Bureau's responsibility—not that of the Services—to define its proposed activities and to provide a biological assessment that is based on the best available science. The policy states that the Bureau should rely on the Services to respond with a scientifically sound biological opinion—which may include a determination that an activity will adversely affect a listed species. In that event, Bureau and Service officials would work together to develop acceptable measures for mitigating the activity's detrimental effects. In commenting on a draft of this statement, Service officials said that the purpose of the consultation process is to discuss the potential effects of proposed actions early in the planning process and to explore options that will avoid jeopardy

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### Insufficient Staffing Resources Are a Key Concern

Service and action-agency officials identified a lack of sufficient resources—particularly at the Services—as a key concern that limits timely completion of consultations. Service and action-agency officials are concerned that although staff levels have increased in recent years, staffing has not kept pace with their growing workloads. For example, data from the Fish and Wildlife Service's office in Portland, Oregon, show that while the office's budget for consultations increased approximately 40 percent between fiscal years 1998 and 2002, the number of consultations for which each biologist was responsible increased about 90 percent. One consequence of this disparity between resources and workload is that the Services cannot always meet regulatory timeframes. Furthermore, officials said that there is an upward trend in the types of activities that require consultation. For example, as a result of a court ruling in the mid-1990s, the Bureau of Land Management and the Forest Service must consult with the Services on their land management plans. This ruling created a substantial new workload for the agencies and the Services, and they are still working to complete the consultations in some areas.

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## Some Nonfederal Parties Are Concerned about the Length and Cost of the Permitting Process

Nonfederal parties wishing to conduct activities requiring consultation because they involve federal permits or licenses also expressed concerns about the time and cost required for the process. When nonfederal parties apply to an action agency for a permit or license, they must go through reviews required by the action agency for approval. These reviews can include consultation. Action agencies either prepare (sometimes at the applicant's expense), or ensure that applicants have arranged for the preparation of, a biological assessment; the agency then reviews the biological assessment and requests additional information as needed. According to a Service official, economic impacts and the scope of the proposed activity are considered during consultation, in addition to whether or not the activity will jeopardize listed species or adversely modify critical habitat.

In one example, a private landowner waited about 3 years—including time for Forest Service permit review and consultation-related activities—for a permit that would allow him to cross Forest Service land to harvest his privately owned timber stand. To cross the Forest Service land, the landowner had to improve an old logging road and construct about half a mile of new road, which he did himself, work valued at about \$9,000; he also reimbursed the Forest Service about \$6,800 for the costs to prepare a biological assessment for the consultation. Further, according to the landowner, when he was finally able to harvest the timber its market value had dropped by one-third to one-half from its anticipated value. The Forest Service biologist who worked on this consultation noted that it was affected by numerous complicating factors, including a court decision barring the Fish and Wildlife Service from issuing biological opinions on activities affecting spotted owls and a new policy for dealing with private landowners.

In another example, the average time for the Corps to process 19 permits issued in 2002 for building private docks or for similar activities on Lake Washington (near Seattle) was about 2 years. This time included the consultation time spent by each Service, as well as the time spent by the action agency to help the permit applicant complete a biological assessment and meet other Corps requirements for the permit. For these permits, consultation added about \$10,000 to nonfederal parties' costs. Officials from the Services noted that these types of delays were not uncommon when bull trout and salmon were first listed because so many activities, many of them in urban areas, were affected. A National Marine Fisheries Service official stated that these listings created an "automatic backlog" of consultations that overwhelmed them. A Fish and Wildlife Service official also noted that the delays were at least partly due to their

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unfamiliarity with the effects that building docks could have on bull trout. The bull trout was the first aquatic species that they had to deal with in the Pacific Northwest.

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**Environmental Groups Are Concerned that Consultations Lack Openness and Effectiveness**

Environmental advocacy groups also expressed concerns with the consultation process. Representatives of two environmental advocacy groups said land management decision-making processes, such as consultation, are often closed to them until after final decisions are made, and that the only way they can make their voices heard is through administrative appeals and lawsuits. One representative expressed concern that the streamlining process lacks transparency and compromises the Services' role of scrutinizing action-agency activities. Service officials noted that the Endangered Species Act does not require public participation or public comment in the consultation process. One environmental group's representative expressed concern that the Services do not have a comprehensive view of a species' status across its range and therefore are limited in their ability to determine the potential effects of proposed activities. For example, the bull trout may or may not be significantly affected by an activity in one stream, but unless the Services know the trout's status across its range, they cannot make informed decisions about how an activity will affect the species as a whole.

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Mr. Chairman, this completes my prepared statement. I would be happy to respond to any questions that you or Members of the Subcommittee may have.

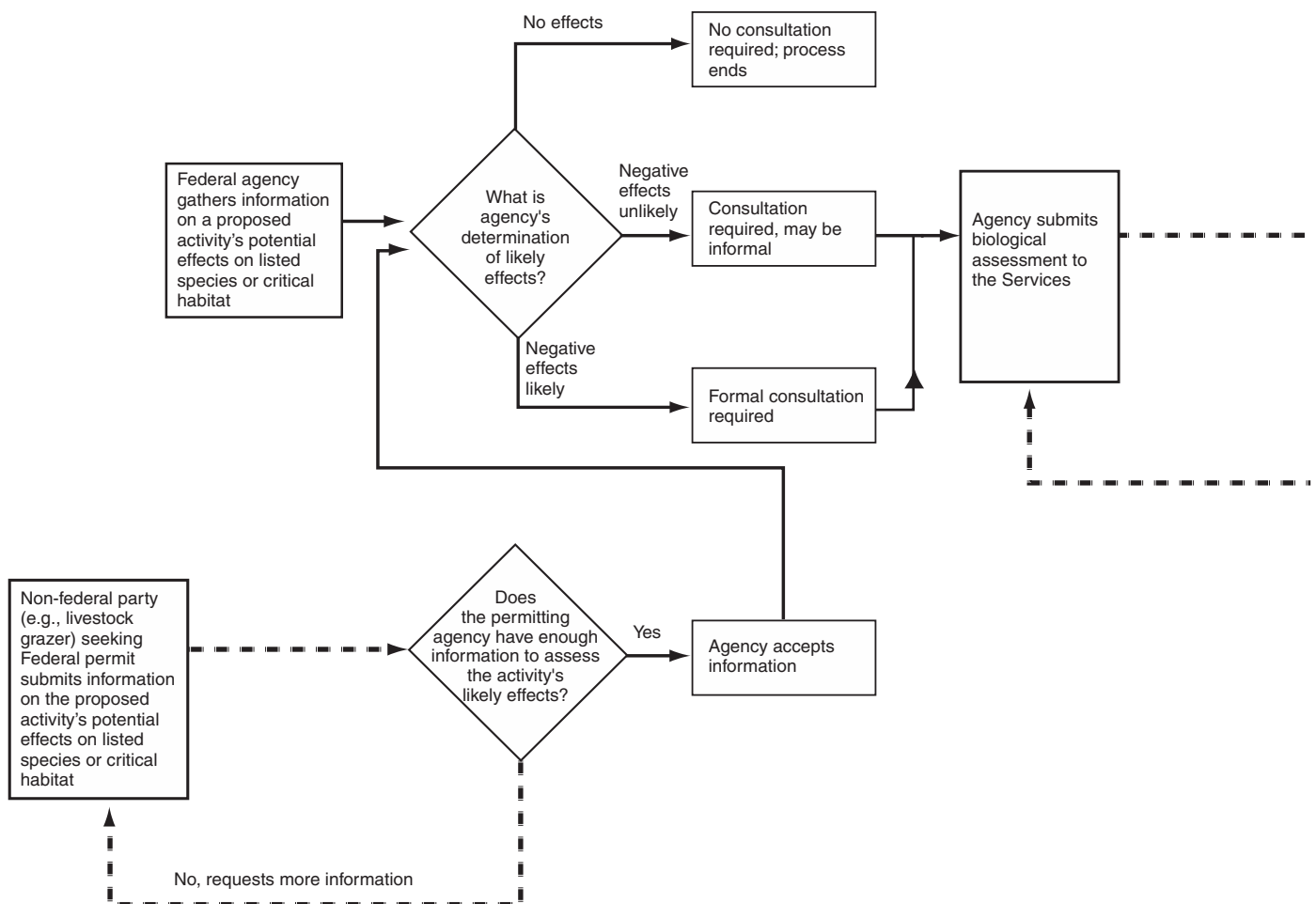
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**GAO Contacts and Staff Acknowledgments**

For further information about this testimony, please contact me at (202) 512-3841. Trish McClure, Jennifer Duncan, Jaelith Hall-Rivera, Cynthia Norris, Anthony Padilla, Katherine Raheb, Jeff Rueckhaus, Rebecca Shea, and Pamela Tumler also made key contributions to this statement.

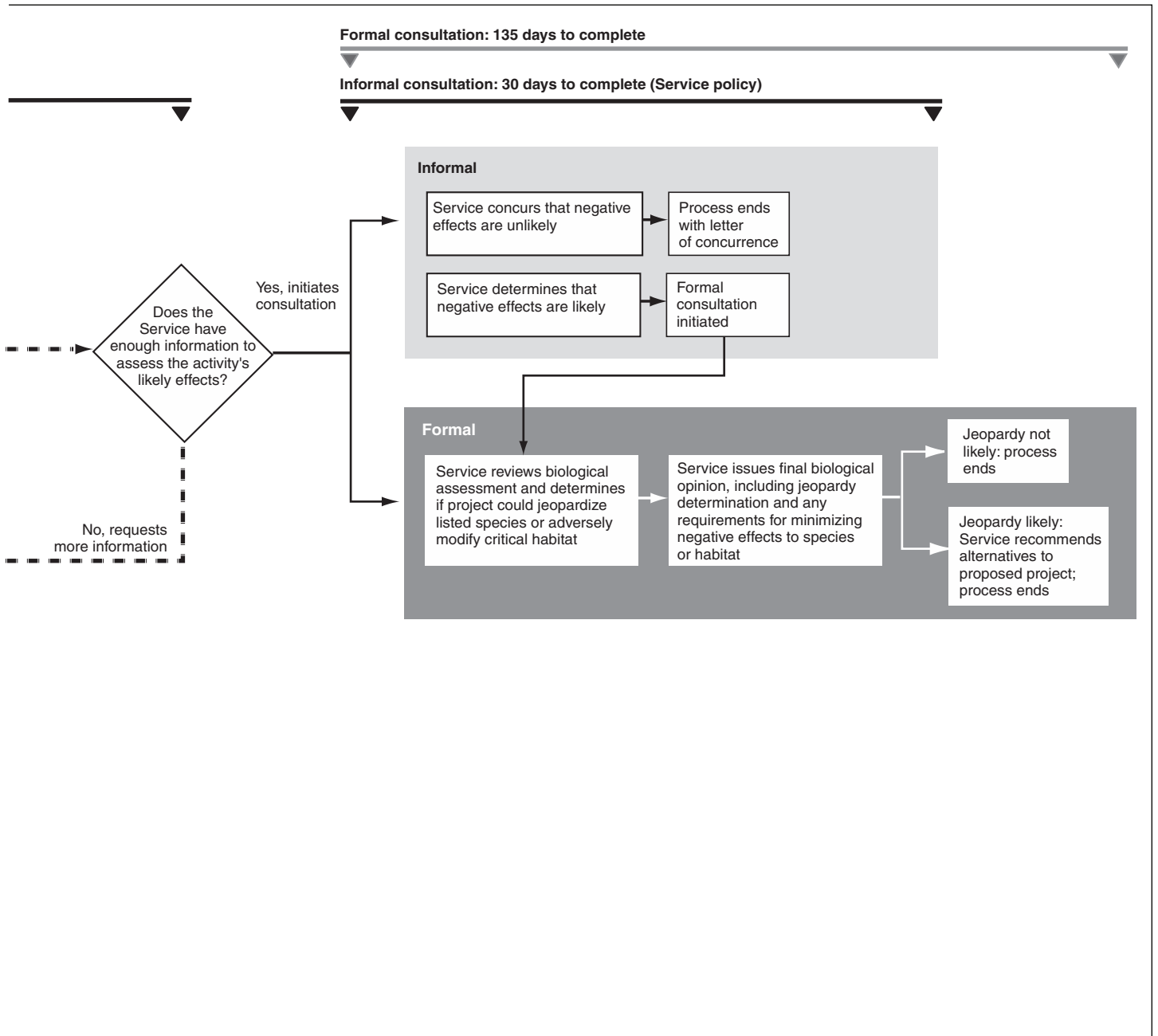
# Appendix I: Endangered Species Act Consultation Process

No deadline to complete



Source: GAO analysis of data from multiple agencies.





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## To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: [www.gao.gov/fraudnet/fraudnet.htm](http://www.gao.gov/fraudnet/fraudnet.htm)

E-mail: [fraudnet@gao.gov](mailto:fraudnet@gao.gov)

Automated answering system: (800) 424-5454 or (202) 512-7470

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## Public Affairs

Jeff Nelligan, Managing Director, [NelliganJ@gao.gov](mailto:NelliganJ@gao.gov) (202) 512-4800  
U.S. General Accounting Office, 441 G Street NW, Room 7149  
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