



SUBJECT Qualification Program for ESA Compliance	FINAL NUMBER GE14-03(B)	EFFECTIVE DATE 10/02/2014	VALIDATION DATE 05/14/2020	SUPERSEDES GE12-01(B)
TOPIC/PROGRAM Environmental Resources Unit Biology Program	WEB LINK(S) http://www.oregon.gov/ODOT/HWY/TECHSERV/Pages/technicalguidance.aspx APPROVED SIGNATURE Original signed by: Susan Haupt Environmental and Hydraulic Engineering Manager			

PURPOSE

This bulletin supersedes Technical Services Bulletin GE12-01(B) and establishes professional qualifications and expectations for Agency Biologists, Local Governments, and the consultant community that contracts with the Oregon Department of Transportation (ODOT) to make effects determinations under Section 7 of the federal Endangered Species Act (ESA) and to write and review ESA compliance documents. Only Biologists who pass the Qualification Program described in this Technical Bulletin are authorized to make ESA effects determinations for ODOT on behalf of federal nexus agencies.

GUIDANCE

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

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

DEFINITIONS & ACRONYMS

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

Biological Assessment Committee (BAC) – the original 2004 interagency team of stakeholders who assisted in development of the ODOT Consultant Qualification for Biological Assessment Deliverables Program (renamed the Qualification Program for ESA Effects Determinations in 2010 and the Qualification Program for ESA Compliance in 2013) and guidance to improve consultant-delivered ESA effects determinations.

Biological Opinion (BO) – a document that includes: (1) the opinion of the Services as to whether or not a Federal action is likely to jeopardize the continued existence of ESA-listed species or result in the destruction or adverse modification of designated critical habitat; (2) a summary of the information on which the opinion is based; and (3) a detailed discussion of the effects of the action on ESA-listed species or designated critical habitat. [50 CFR §402.02, 50 CFR §402.14(h)]

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

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

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

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

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

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

Federal Highway Administration (FHWA) – an agency within the U.S. Department of Transportation that provides oversight and stewardship of Federal funds for the construction and maintenance of the [National Highway System](#) (primarily [Interstate](#)

[Highways](#), [U.S. Routes](#) and most State Routes). Typically FHWA is the lead Federal action agency for Federal-Aid transportation projects.

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

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

No Effect Memo – a document prepared by a qualified Biologist following ODOT guidance that details the determination that a transportation project with a Federal nexus will have no effect, either positive or negative, on listed species or designated critical habitat.

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

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

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

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

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

BACKGROUND/REFERENCE

A Biological Assessment Committee (BAC) was convened in fall 2004 to develop and implement a plan to improve the quality of BAs produced by consultants for ODOT. The committee was chaired by the ODOT Natural Resources Unit Manager and included internal and external stakeholders. The BAC identified two desired outcomes: (1) development of a training program that established expectations for BAs written for ODOT, and (2) development of a process that ensured BAs were of a consistent quality.

The resultant training course ‘ODOT Consultant Qualification for Biological Assessment Deliverables’ was initially offered in 2005. In subsequent years, the program built upon lessons learned, new regulatory developments, and compliance processes and document templates specific to ODOT projects. In 2013, the ESA training program was expanded to include expectations for completing ESA consultation through the statewide Federal-Aid Highway Program (FAHP) Programmatic Biological Opinion for projects funded by FHWA, Oregon Division. To reflect this change, the training program was renamed the ‘ODOT Qualification Program for ESA Compliance.’ All Federal-Aid highway projects managed by ODOT (including Local Agency projects) that are within the scope of the FAHP Programmatic, must use the FAHP Programmatic for ESA consultation.

EXPLANATION

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

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

1) Minimum Qualifications

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

2) Training and Testing

Biologists who meet the minimum qualifications above must complete ODOT training and testing to become an ODOT Qualified Biologist to make ESA effects determinations. Required training consists of an ESA core course and periodic program updates. The core course was developed by ODOT in partnership with FHWA, NMFS and USFWS, and it is revised as necessary for each subsequent offering. Course pre-requisites include a working knowledge of the ESA (16 USC 1531 et seq.), ESA regulations (50 CFR 17, 50 CFR 402), and the Endangered Species Consultation Handbook (USFWS and NMFS 1998). *[For individuals seeking to improve their understanding of the ESA, courses are available from a variety of external agencies, organizations, and institutions.]* Because pre-requisite ESA knowledge, as defined above, is assumed of all participants, course content for the ODOT Qualification Program focuses on ODOT-specific ESA compliance processes and templates. Changes to ESA regulatory and ODOT procedural expectations are addressed in program updates trainings. The core course and program updates are offered as needed.

Following the initial training, core course participants must pass a two-part timed, open-book, multiple-choice/short-answer written examination. A passing score of 80% on each part of the exam qualifies the Biologist to write and review effects determinations for ODOT. Part I of the exam covers pre-requisite knowledge of ESA regulations and the Consultation Handbook, information not addressed in the ODOT core course. Part II of the exam covers ODOT-specific ESA compliance processes and templates presented during the training. Individuals are given no more than three opportunities within a 12-month period to pass both parts of the exam. Individuals who fail to pass the full exam following three attempts must re-take the core course.

Language in the 2010 ODOT Price Agreement (PA) for Biological and Wetland Services states: "At least one individual who signs, either as author or reviewer of ESA effects determinations documents, must be an ODOT qualified Biologist...If

Consultant fails to have at least one Biologist successfully complete the qualification process within 60 calendar days of PA award...Agency may terminate the PA." The Qualification Process described in the PA is the 'ODOT Qualification Program for ESA Compliance' described in this Bulletin, and 'ESA effects determinations' include all ESA compliance documents. Statements of Work (SOW) for this PA or other professional services contracts for ESA compliance services on ODOT projects will reflect the requirements of this qualification program.

3) Ensuring Quality

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

- (1) The most recent ODOT templates must be used. Templates are posted on the ODOT Biology Program web page. Qualified Biologists are expected to check for updated templates each time they produce new ESA documents. ODOT is not responsible for notifying qualified Biologists when templates have been updated.
- (2) A qualified Biologist must sign all required ESA compliance documents thereby certifying that the documents meet ODOT standards of quality.
- (3) To remain qualified, Biologists under this program are now required to take all program updates courses. Updates will not be offered more frequently than yearly. Individuals with scheduling conflicts should contact ODOT Human Resources.

RESPONSIBILITIES

Environmental Leadership Team (ELT)

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

Geo-Environmental Section, Environmental Resources Unit (ERU)

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

Region Environmental Staff

- For contracted ESA effects determinations and compliance documents, only use consultant firms that retain at least one Biologist qualified under this program; the list of qualified firms and Biologists is posted on the ODOT Biology webpage.

- Ensure that each required ESA document, including No Effect Memos, is signed by a Biologist who has successfully completed this Qualification Program and who retains qualification.
- Review ESA effects determinations for Region projects, including Local Government projects.
- Forward program improvement suggestions and concerns to the Environmental Resources Unit.

Local Agency Liaisons

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

ODOT Human Resources

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

Consultants and Local Governments that Provide Effect Determinations to ODOT

- Enroll Biology staff in the ODOT Qualification Program for ESA Compliance course to be eligible to produce effects determinations on behalf of ODOT.
- Check the ODOT Biology Program website for updated ESA guidance and document templates; use the most recent information and templates.
- Submit ESA documents to ODOT Region environmental staff for submittal to Federal nexus and regulatory agencies.

ACTION REQUIRED

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

SPECIAL INSTRUCTIONS

This Bulletin supersedes GE12-01(B) and is effective immediately. This Bulletin shall be followed when included in the terms and conditions of ODOT contracts and Local Government contracts for transportation projects that receive FAHP funding and/or that have a Federal nexus.

CONTACT INFORMATION

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