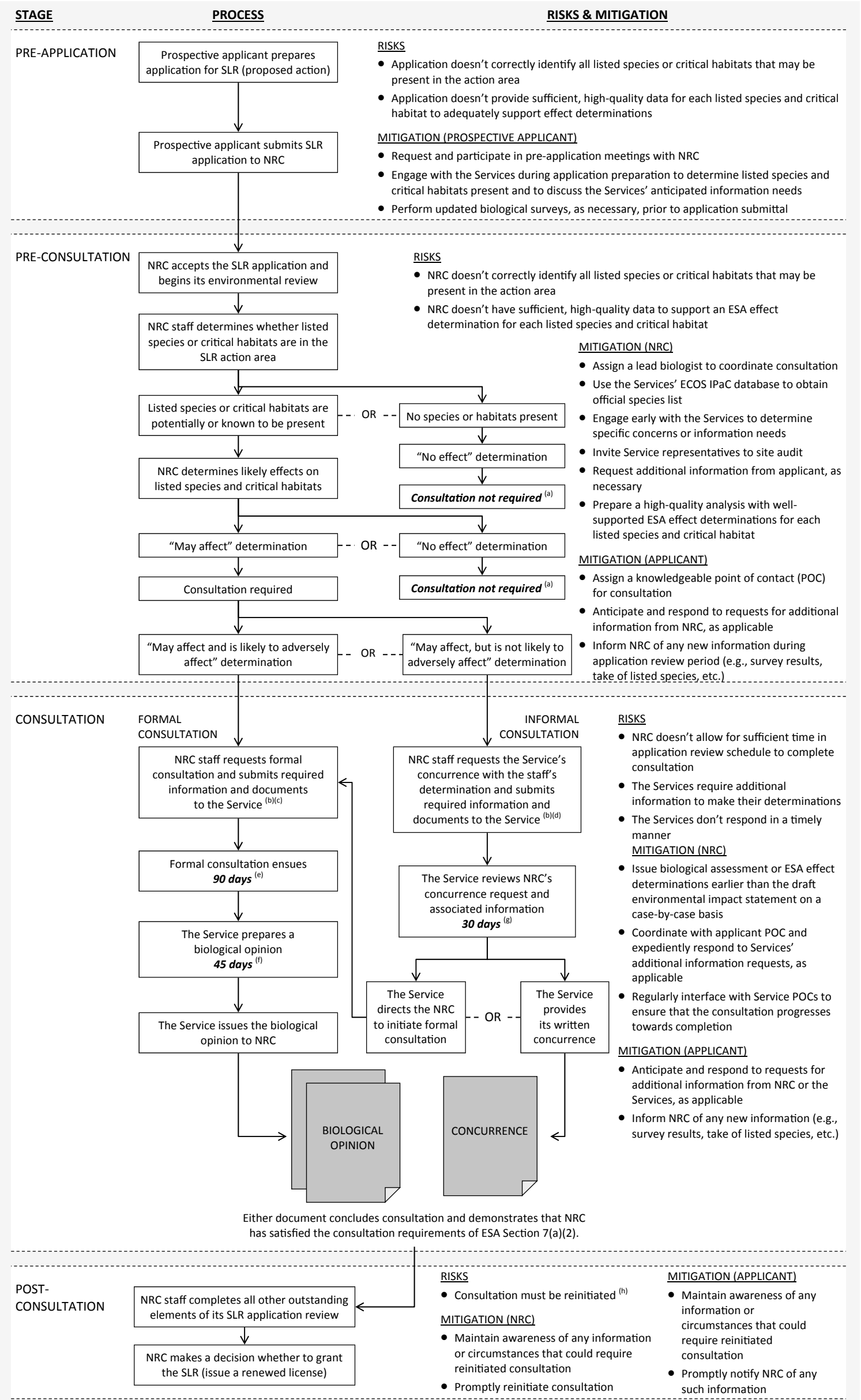


Endangered Species Act (ESA) Section 7 Flow Chart

Subsequent License Renewal (SLR) Consultation, Risks, and Mitigation



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Notes and References

Notes

^(a) **Consultation not required:** The ESA’s implementing regulations do not require Federal agencies to consult with the Service if it is determined that a Federal action will have “no effect” on listed species or critical habitats.

^(b) **NRC...submits required information and documents to the Service:** Biological assessments are required for any Federal action that is a “major construction activity” (50 CFR 402.12(b)), which the ESA Section 7 regulations define as “a construction project (or other undertaking having similar physical effects) which is a major Federal action significantly affecting the quality of the human environment as referred to in the National Environmental Policy Act [NEPA, 42 U.S.C. 4332(2)(C)]” (50 CFR 402.02). Because the requirement to prepare a biological assessment is separate from the requirement to conduct formal consultation, preparation of a biological assessment hinges on whether the Federal action meets the preceding definition rather than whether ESA Section 7 consultation is to be conducted formally or informally.

Although the contents of a biological assessment are at the discretion of a Federal agency and will depend on the nature of the Federal action, the ESA Section 7 regulations at 50 CFR 402.12(f) provide a list of information that may be considered for inclusion. If the Federal agency intends to request formal consultation, the Federal agency must include the information listed below in Note (c) in the biological assessment or accompanying request for formal consultation. If the Federal agency intends to request the Service’s concurrence with its ESA effect determinations under the informal consultation provisions, the Federal agency should include enough information to support and justify its determinations.

^(c) **NRC staff requests formal consultation....:** Formal consultation requires that the NRC submit to the Service a written request to initiate formal consultation along with the following information (50 CFR 402.14(c)):

- (a) a description of the action to be considered;
- (b) a description of the specific area that may be affected by the action;
- (c) a description of any listed species or critical habitat that may be affected by the action;
- (d) a description of the manner in which the action may affect any listed species or critical habitat and an analysis of any cumulative effects;
- (e) relevant reports, including any environmental impact statement, environmental assessment, or biological assessment prepared; and
- (f) any other relevant available information on the action, the affected listed species, or critical habitat.

If a biological assessment is required, formal consultation shall not be initiated until the biological assessment has been completed and submitted to the Service (50 CFR 402.14(c)).

^(d) **NRC staff requests the Service’s concurrence with the staff’s determination....:** Informal consultation is an optional process designed to assist the Federal agency in determining whether formal consultation is required. During informal consultation, the Federal agency may request the Service’s written

concurrence that the Federal action is not likely to adversely affect listed species or critical habitat. If the Service provides such concurrence, the consultation process is terminated, and no further action is necessary (50 CFR 402.13(a)).

^(e) **Formal consultation ensues (90 days):** Formal consultation concludes within 90 days after its initiation unless extended. If an applicant is involved, the Service and the Federal agency may mutually agree to extend the consultation provided that the Service submits to the applicant, before the close of the 90 days, a written statement setting forth the reasons why a longer period is required, the information that is required to complete the consultation, and the estimated date on which the consultation will be completed. A consultation involving an applicant cannot be extended for more than 60 days without the consent of the applicant (50 CFR 402.14(e)).

^(f) **The Service prepares a biological opinion (45 days):** Within 45 days after concluding formal consultation, the Service shall deliver a biological opinion to the Federal agency and any applicant (50 CFR 402.14(e)).

^(g) **The Service reviews NRC’s concurrence request and associated information (30 days):** For Federal actions requiring the preparation of a biological assessment, the Service will respond in writing within 30 days as to whether it concurs with the findings of the biological assessment (50 CFR 402.12(j)). The Service may also use the results of the biological assessment in determining whether to request that the Federal agency initiate formal consultation (50 CFR 402.12(k)(2)).

^(h) **Consultation must be reinitiated:** Reinitiation of consultation is required where discretionary Federal involvement or control over the action has been retained or is authorized by law and (50 CFR 402.16):

- (a) if the amount or extent of taking specific in the incidental take statement is exceeded;
- (b) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered;
- (c) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or
- (d) if a new species is listed or critical habitat designated that may be affected by the identified action.

References

Endangered Species Act of 1973, as amended (16 U.S.C § 1531 et seq.)

50 CFR 402. Code of Federal Regulations, Title 50, Wildlife and Fisheries, Part 402, “Interagency Cooperation—Endangered Species Act of 1973, as amended.”

Endangered Species Consultation Handbook: Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act. FWS and NMFS, March 1998. Available at <<https://www.fws.gov/endangered/esa-library/pdf/>