

Ecology Interim procedure for Endangered Species Act Compliance

For FY2010, Ecology is re-emphasizing the agency's commitment to Endangered Species Act compliance. Applicants for financial assistance for design and construction projects that need to prepare a Biological Assessment must also complete consultation with the National Marine Fisheries Service and US Fish and Wildlife Service (Federal Services) before Ecology can enter into a funding agreement with an applicant.

Procedures for FY2010:

1. Ecology will contact communities that Ecology expects will apply in October, to inform them that Ecology requires compliance with the endangered species act in order to fund design and construction projects. Projects must either demonstrate that there will be "No Effect" to endangered species, or complete a Biological Assessment (BA), and receive concurrence from the Services,
2. All applicants needing to complete consultation should provide two copies of the project's Biological Assessment to Ecology's regional office as soon as possible. Ecology will forward one copy of the B.A. to EPA with a request that EPA initiate consultation.
3. Through October 2008, regional offices will conditionally approve facility plans, and plans and specifications that are otherwise complete, if the community has not received letters of concurrence from the Services. Upon concurrence from the services, Ecology will issue final approval. At the time it issues conditional approval of a facility plan, Ecology will also approve the document as an engineering report if requested by the community.
4. If, at the time of application, the applicant **fully complied with the requirements of the ESA**, the project will be eligible for funding and Ecology will evaluate and score the application.
5. If, by December 12, 2008, an applicant that is required to prepare one **has not prepared a BA**, the project will be ineligible for funding.
6. If, by December 12, 2008, the applicant **has prepared a BA** and EPA **has not completed consultation** with the Services:
 - o Ecology will consider the application complete.
 - o Ecology will **not** sign a funding agreement unit EPA has completed consultation with the Federal Services
 - o If EPA has not completed consultation with the Services prior to December 31, 2009, Ecology will re-direct the funding to other eligible projects.

In addition to the approval letters for the facility plan, or plans and specifications, applicants should attach to their application documentation of their ESA compliance status.

Applicants with questions about the consultation process or preparation of a Biological Assessment should contact David Dunn at (360)407-6503 or dadu461@ecy.wa.gov
