

**BPA's Endangered Species Act Compliance Flow Chart for Fish and Wildlife Projects** <sup>1/</sup> May 19, 2006

**EFFECTS EVALUATION**

Determine if: 1. ESA-listed species, 2. ESA-proposed species, 3. designated critical habitat, 4. proposed critical habitat, and 5. EFH <sup>3/</sup> are: 1. in or near the project area, and 2. if they could be affected by the proposed project.

Environmental Lead to begin ESA review.

**START**  
Contractor to assist the BPA Environmental Lead by providing a complete and final description of the proposed project. <sup>2/</sup>

**NO EFFECT PROJECT AS PROPOSED**

If implementation of the proposed project will cause no effects on a listed and/or proposed species, designated and/or proposed critical habitat, and/or EFH, then prepare a "no-effect determination" memo, including the supportive reasoning for this call, and submit it to the project file. Authorize work. <sup>4/</sup>

**FINISH**  
ESA COMPLIANCE COMPLETED

**NO EFFECT PROJECT W/ MITIGATION**

If implementation of the proposed project (along with mitigation measures) will cause no effects on a listed and/or proposed species, designated and/or proposed critical habitat, and/or EFH, then prepare a "no-effect determination" memo, including the reasoning and mitigation for this call, and submit it to the project file. <sup>4/</sup>

**MAY AFFECT**

If implementation of a project has potential to result in effects to listed and/or proposed species, designated and/or proposed critical habitat, and/or EFH <sup>5/</sup>, then search for any existing ESA compliance coverage (Sec. 6 Coop. Agreement, Sec. 7 Biological Opinion, Sec. 10 permit, Sec. 4(d) rule, etc.).

BPA Environmental Lead may request technical assistance from the USFWS and/or NOAA Fisheries to help determine if any existing ESA information would provide sufficient coverage for the proposed action.

**ESA COVERAGE**

BPA can use pre-existing ESA coverage providing that those actions are identical or very similar to the proposed actions in the same geographic area, and that the following are documented: 1. reference to the earlier document; 2. how proposed impacts to the species would be similar to those in the ESA coverage; 3. that no new species or critical habitat have been listed, designated, or proposed for the action area; and 4. relevant informational changes.

**NO ESA COVERAGE**

If there is no existing ESA compliance coverage for the project that BPA can use, then initiate ESA Section 7 consultation with the USFWS and/or NOAA Fisheries. <sup>6/</sup>

Go To the Reverse Side  
"Streamlined ESA Consultation"

Contractor may be asked to assist the Environmental Lead by providing a Biological Assessment and/or other support information.

**ESA SECTION 7 CONSULTATION**

Environmental Lead will oversee preparation of a Biological Assessment for listed and/or proposed species, designated and/or proposed critical habitat, and/or EFH that may be affected.

From the Reverse Side  
"No Streamlining Consultation"

**FORMAL CONSULTATION**  
If the BA determination is "may affect - likely to adversely affect", submit BA to the USFWS and/or NOAA Fisheries and request Formal Consultation.

**AUTHORIZE WORK**

Environmental Lead to authorize work and monitor compliance with any mitigation measures and/or terms and conditions. <sup>7/</sup>

**INFORMAL CONSULTATION**

If the BA determination is "may affect - not likely to adversely affect", submit BA to the USFWS and/or NOAA Fisheries and request concurrence.

USFWS and/or NOAA Fisheries may request BPA to provide additional information and assistance.

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USFWS and/or NOAA Fisheries provide BPA Letter of Concurrence.

USFWS and/or NOAA Fisheries provide BPA Biological Opinion that may include an incidental take statement with non-discretionary terms and conditions, as appropriate, and that may include a Reasonable and Prudent Alternative.

**AUTHORIZE WORK**

Environmental Lead to authorize work only after approval by USFWS and/or NOAA Fisheries; and monitor compliance with required mitigation measures and/or terms and conditions. <sup>7/</sup>

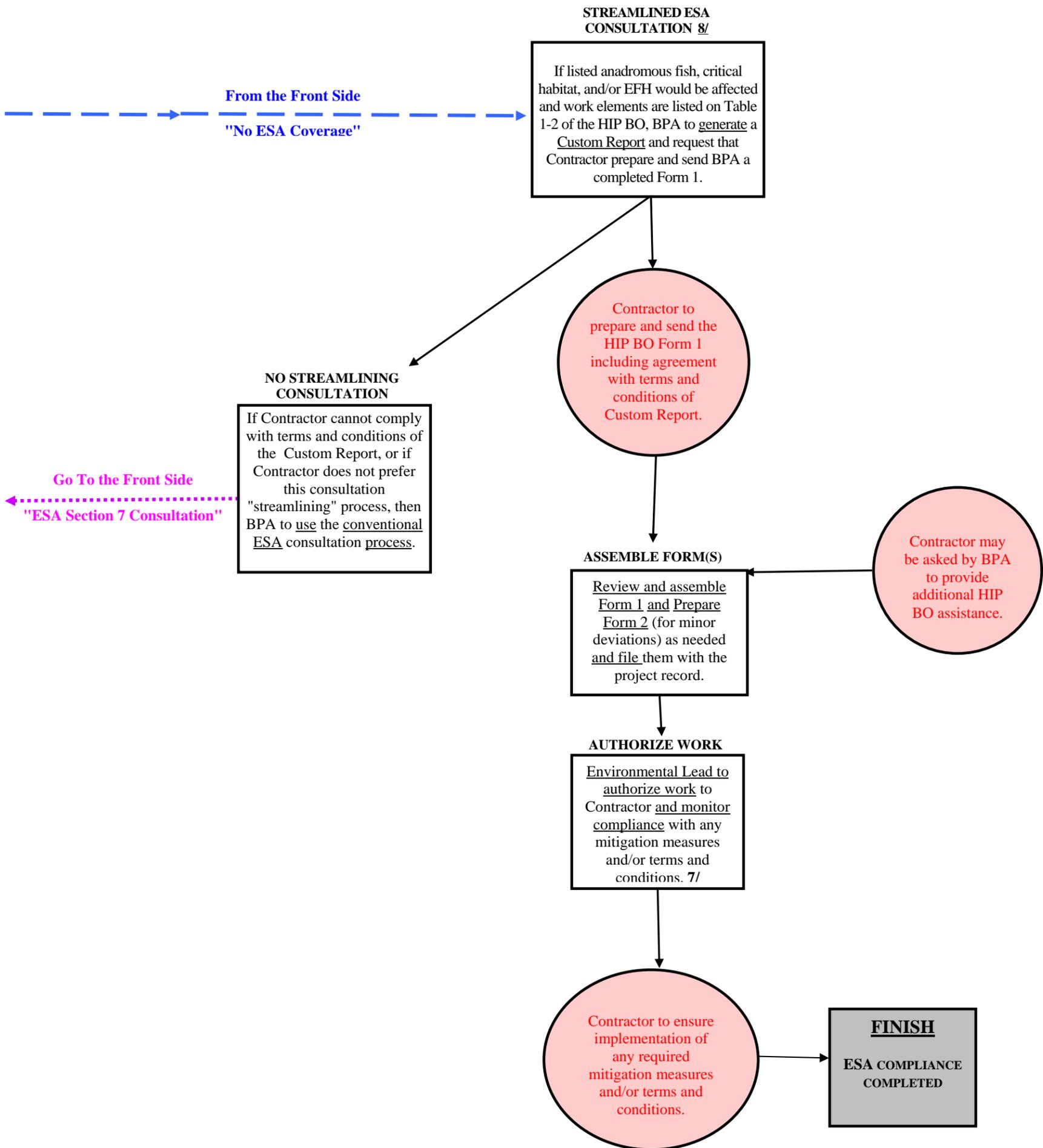
Contractor to ensure implementation of any required mitigation measures and/or terms and conditions.

**FINISH**  
ESA COMPLIANCE COMPLETED

- BPA's Environmental Responsibilities
- BPA's TBL Role
- USFWS/NOAA Fisheries Authority

**PLEASE NOTE: TIMEFRAMES FOR COMPLETING ESA COMPLIANCE CAN RANGE FROM A DAY TO A YEAR, DEPENDING WHICH EFFECTS PATH IS TAKEN.**

<sup>1/</sup> In accordance with the Endangered Species Act of 1973 (ESA) as amended, Federal agencies shall "seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act". This compliance process requires integrated communication and participation among BPA, the Contractor, and the U.S. Fish and Wildlife Service and/or NOAA Fisheries.  
<sup>2/</sup> ESA compliance review cannot proceed unless this is finalized.  
<sup>3/</sup> In accordance with the Magnuson-Stevens Fishery Conservation and Management Act, Federal agencies which carry out activities that may adversely impact Essential Fish Habitat (EFH) are required to consult regarding the potential effects of their actions on EFH. EFH means those waters and substrate necessary to fish for spawning, breeding, feeding or growing to maturity. The requirements of EFH reviews are hereby embedded into BPA's ESA compliance review. As needed, Environmental Planning biologists can suggest websites to assist in identifying species, critical habitat, and EFH.  
<sup>4/</sup> Process complete for only those species that would not be affected.  
<sup>5/</sup> Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct. "Harm" is further defined by FWS to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. "Harass" is defined by FWS as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering.  
<sup>6/</sup> Section 7 consultation with the USFWS includes wildlife, plants, bulltrout, and non anadromous-listed fish species; consultation with NOAA Fisheries includes anadromous and marine fish, marine mammals, marine turtles, marine invertebrates, and marine plants.  
<sup>7/</sup> Environmental Lead to ensure that required mitigation measures, and terms and conditions are included in BPA's decision documents, such as ROD, FONSI, MAP, CX, etc.



8/ This streamlined process applies only to the species regulated by NOAA Fisheries and not to any species regulated by the USFWS. The Habitat Improvement Program (HIP) BO title is: "Endangered Species Act Section 7 Consultation Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation (Habitat Improvement Program)" of August 1, 2003/00750.