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Caribbean Ecological Services Field Office



Endangered Species Act (ESA):

Consultation Process Under

Section 7

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Caribbean Ecological Services Field Office
June 19 & July 20, 2018



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Endangered Species Act

...to provide a means to conserve ecosystems upon which endangered and threatened species depend...

“It is the policy of Congress that all Federal departments and agencies shall seek to conserve endangered and threatened species and shall use their authorities in furtherance of the purposes of this Act”
(Section 2(c)(1))



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Section 7 of the ESA

- Section 7 (a)(1)
 - All Federal agencies shall, in consultation with and with the assistance of the DOI Secretary (USFWS), utilize their authorities in furtherance of the purposes of the ESA by carrying out programs for the conservation of listed species.
- Section 7 (a)(2)
 - Each Federal agency shall, in consultation with and with the assistance of the DOI Secretary (USFWS), insure that any action authorized, funded, or carried out (**Federal Nexus**) by such agency is not likely to:
 - **jeopardize** the continued existence of any endangered or threatened species (do not affect survival and recovery of species)
 - result in the destruction or **adverse modification** of designated critical habitat (CH) of such species



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Definitions

Endangered species - a species which *is in danger of extinction throughout all or a significant portion of its range*

Threatened species - a species which *is likely to become endangered within the foreseeable future throughout all or a significant portion of its range*

Foreseeable future - period of time over which events can be reasonably anticipated



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Definitions

Designated Critical Habitat - *specific areas within the geographical area occupied by the species at the time of listing*

- Physical or biological features (constituent elements): e.g., space, food, water, shelter, breeding, germination, etc.
- Essential to the conservation of the species
- May require special management considerations or protection



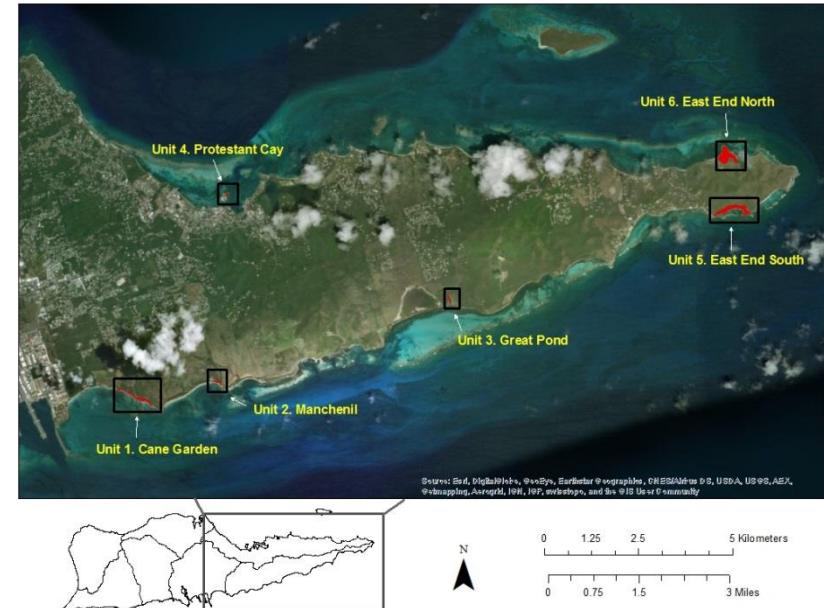
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Definitions

Designated Critical Habitat - *May include specific areas outside the geographical area occupied by the species given they are essential for its conservation*
(50 CFR Part 17 or 226)





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ESA, Section 9 - Prohibitions

Take - defined as to *harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct*

Harass - *an intentional or negligent act or omission, which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly impair normal behavior patterns, including breeding, feeding or sheltering* (50 CFR 17.3)



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ESA, Section 9 - Prohibitions

Harm - *significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering* (50 CFR 17.3)

Incidental Take - *take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity* (50 CFR 402.02). **Evaluated through Section 7 consultations or authorized under Section 10 of the ESA.**



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ESA, Section 9 - Prohibitions

Wildlife (animals) - *protect listed wildlife species from threats of “take”*

Plants - *unlawful to remove or reduce to possession or cause malicious damage to any listed plant on Federal lands, or cause damage or destruction of any listed plant in knowing violation of any State law or regulation*

Take prohibitions applies to any person or Federal agency



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Listed Species in Puerto Rico and U.S. Virgin Islands

79 species of plants and animals

- 4 amphibians
- 11 reptiles
- 11 birds
- 1 mammal (manatee)
- 52 plants (66%)

Delisted in 2009



*15 of these species also occur in USVI



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Federally Listed Species found in USVI

Animals:

- Virgin Islands tree boa
- St. Croix ground lizard
- Green sea turtle
- Leatherback sea turtle
- Hawksbill sea turtle
- Loggerhead sea turtle
- Antillean manatee
- Piping plover
- Roseate tern
- Red Knot

Plants:

- *Buxus vahlii*
- *Calyptranthes thomasiana*
- *Catesbeia melanocarpa*
- *Zanthoxylum thomasianum*
- *Agave eggersiana*





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Designated Critical Habitats (15)



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Critical Habitat Designations for Puerto Rico and the U.S. Virgin Islands



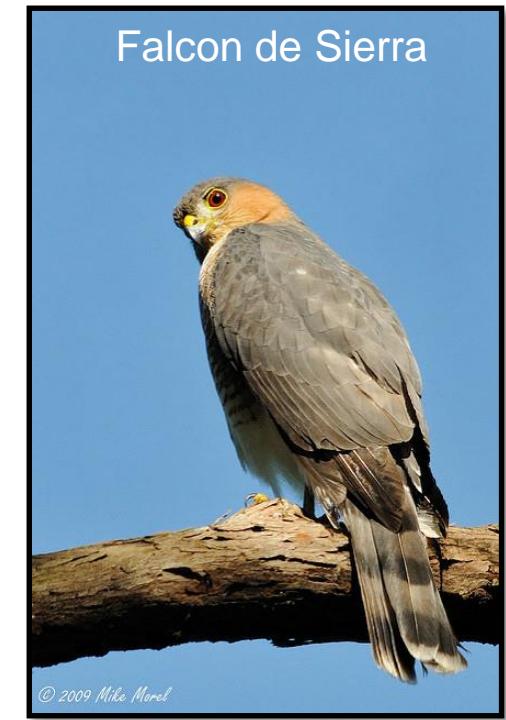
- Agave eggersiana
- Gonocalyx concolor
- Varronia rupicola
- Catesbaea melanocarpa
- St. Croix ground lizard
- Yellow-shouldered Blackbird
- Coqui guajon
- Coqui llanero
- Mona Is. boa
- Mona Is. iguana
- Monito gecko
- Culebra giant anole
- Golden coqui
- Leatherback sea turtle
- Hawksbill sea turtle



Coastal and Marine Species



Northern Karst Region of Puerto Rico



Southern Karst Region of Puerto Rico



Guabairo de PR



Sapo Concho

© Jan Paul Zegarra



Varronia rupicola



Bariaco



Mitracarpus maxwelliae

O. Monsegur

Central Mountains of Puerto Rico



Palo de Nigua



Cotorra de PR

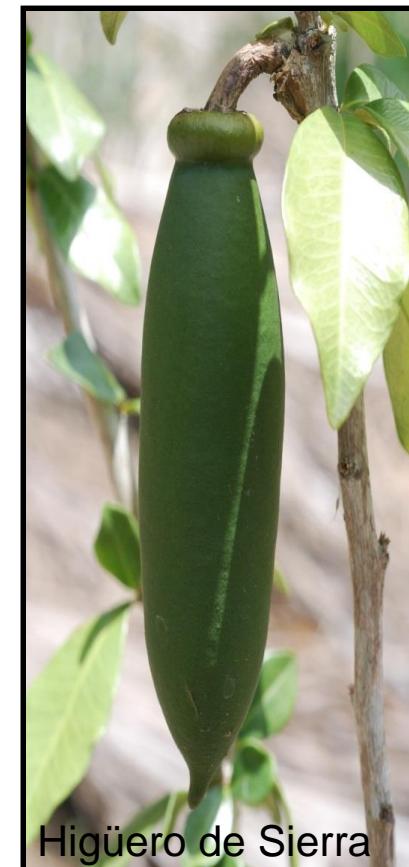
JesúsRíos/USFWS



Paloma Sabanera



Reinita de Bosque Enano



Higüero de Sierra

St. Croix, USVI

Buxus vahlii



O. Monsegur



Catesbaea melanocarpa O. Monsegur

Agave eggersiana



Dermochelys coriacea

Ameiva polops



St. Tomas, USVI



VI Tree Boa



Zanthoxylum thomasianum



Piping Plover



O. Monsegur

Calyptanthes thomasiana

St. John, USVI





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Candidate Species

A species for which there is sufficient information to list, but for which listing is precluded by other, higher priority actions



- *Solanum conoocarpum* - St. John, USVI



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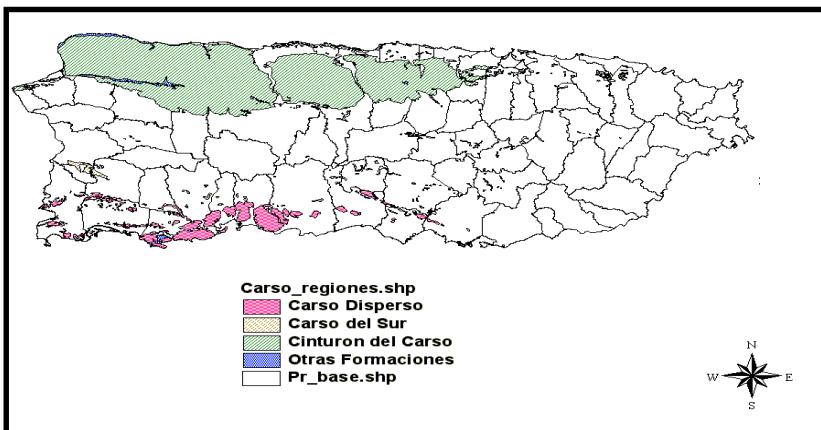
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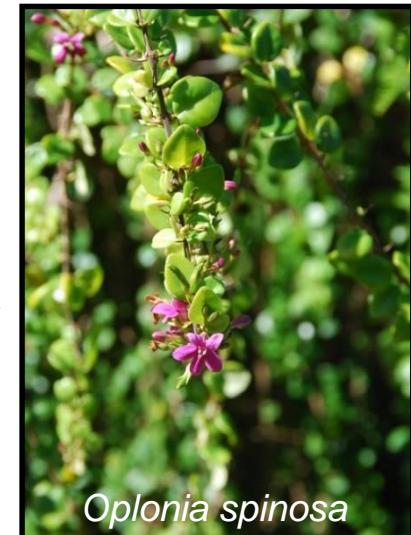
Candidate Species



Atlantea tulita
Harlequin butterfly



- Isabela-Quebradillas-Camuy
- Maricao, Utuado

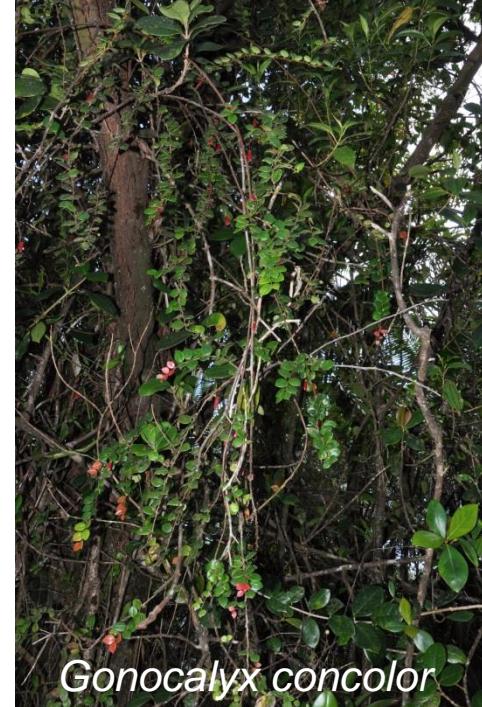


Oplonia spinosa

Recently Listed



Varronia rupicola



Gonocalyx concolor

October 2014



Reinita de Bosque Enano

© 2009 Mike Morel



Agave eggersiana

USFWS

July 2016



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ESA, Section 7

- Section 7 (a)(1)
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ESA, Section 7

Jeopardize - *an action that reasonably would be expected to appreciably reduce the likelihood of both the survival and recovery of a listed species in the wild*

- Reducing: reproduction, numbers, distribution

Adverse Modification - *direct or indirect habitat alteration that appreciably diminishes the value of the critical habitat for the survival and recovery of a listed species*



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What is the main goal of a Section 7 consultation?

To minimize impacts of a proposed Federal action on a listed species, proposed species or designated critical habitat



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**Does the ESA apply to
projects on private and other
non-federal lands?**

Yes



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Who is responsible for Section 7 Compliance?

Federal Agency = Action Agency



**US Army Corps
of Engineers®**



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Who Conducts Consultation?

- Federal Agency (Action Agency)
- Designated non-Federal representative (in writing)
 - May be involved in informal consultations
 - Cannot conduct formal consultations





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Non-Federal Representative

- Section 7 consultation is between Federal Agencies
- USFWS does not consult with a private entities (e.g., a consultant), but we can provide technical assistance
- Federal Agencies may designate State Agencies or municipalities for certain Section 7 consultations
- Can prepare Biological Assessments and provide information for formal consultations



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Consultation Mechanisms

- Technical assistance to avoid **Take** of listed species and their designated critical habitat for actions with no Federal nexus
 - **State Jurisdiction:** USFWS provide comments and recommendations to local agencies and private entities to promote conservation
- Consultation under Section 7 of the ESA - to minimize possible adverse effects to listed species and designated critical habitat
 - **Federal Nexus:** funds, permits, federal actions, etc. (e.g., HUD, RD, USACE, EPA, FEMA, USDA, FCC, FHTA, etc.)



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When Consultation is not Needed?

- No Federal Nexus
- No listed species and/or critical habitat present
- No effect even if listed species or critical habitat are present
- The project meets the categories of a **Blanket Clearance Letter or any other expedited process**





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Consultation Process

- **Informal** - Not likely to adversely affect determination (NLAA)
 - Discountable - low probability to occur
 - Insignificant - small in scale, no **Take** anticipated
 - Beneficial - result in positive effects to the species
- **Formal** - Likely to adversely affect determination (MLAA)
 - **Take** is anticipated
 - Conservation measures must be implemented to avoid or minimize adverse effects



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Informal Consultation Framework

1. Federal nexus
2. Presence of listed species / designated Critical Habitat
3. Federal agency or designee prepares a **complete consultation package:** information on effects, alternatives, and conservation measures
4. NLAA determination by Federal agency or designee
5. USFWS concurrence

Endangered Species



Consultation Handbook

*Procedures for Conducting
Consultation and Conference
Activities Under Section 7 of the
Endangered Species Act*



**U.S. Fish & Wildlife Service
and
National Marine Fisheries Service**



March 1998
Final



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Informal Consultation Process

- No adverse effects are anticipated
- Analysis for determination of effects must be explained and justified
- No take is anticipated
- Federal Agency or designee writes a consultation letter
- If agree, USFWS concurs within 30 days





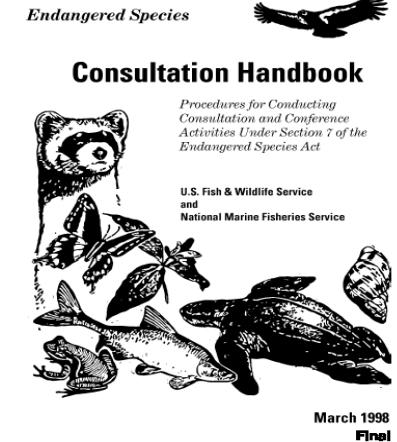
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Formal Consultation Framework

1. Impacts to listed species cannot be avoided or minimized
2. MLAA determination by Federal agency (spp. and CH)
3. USFWS concurrence
4. Federal agency submits initiation package (BA for Major Construction Activities)
5. USFWS - Biological Opinion (BO; 135 days)
6. Final decision is taken by the Federal agency



BO: effects of the action, cumulative effects, conclusion of jeopardy and adverse modification, and reasonable and prudent alternatives



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What is a Complete Consultation Package?

1. Project description (all project components and timing), maps and photos
2. List of species / habitats within site (feeding, breeding, sheltering, migration) (Tools: IPAc & ECOS, Recovery Plans, 5 year reviews)
3. Analysis of all effects (direct, indirect, interrelated, interdependent)
4. Conservation measures or Best Management Practices
5. Effect determination



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Effect Analysis

- Direct Effects - caused by the proposed action and occur at the same time the action is conducted
- Indirect Effects - caused by the proposed action, but occur later on
- Interrelated - actions are part of a larger action and depend on that for their justification
- Interdependent - have no independent utility apart from the action



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Effect Analysis for Designated Critical Habitat

1. Is there designated critical habitat within the project area?
2. Are the biological or physical features affected?
3. Proximity of species or habitat to project
4. Timing of project and species presence (e.g., sea turtles when nesting, breeding season of birds)



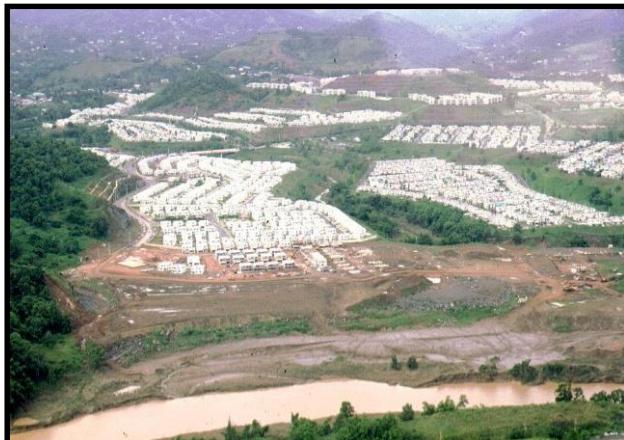
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Effect Analysis for Designated Critical Habitat

5. Will the species, its habitat, or CH be impacted by the project?
6. Conservation measures or Best Management Practices
7. Effect Determination on species and CH





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Effect Determinations

- No effect - No Consultation Required (Stamp process if needed)
- May Affect, but not likely to adversely affect species and CH - majority of projects (No Take anticipated): **Informal Consultation**
- May Affect, likely to adversely affect (Take may occur): **Formal Consultation / Biological Opinion**
- Possible adverse modification to designated critical habitat: **Formal Consultation / Biological Opinion**



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Effect Determinations - Definitions

- **No effect** - Zero effects on listed species or designated CH
- **May Affect, but not likely to adversely affect** species and CH - Effects are discountable, insignificant or completely beneficial
- **May Affect, likely to adversely affect** - Negative effects that can be measured, detected or evaluated



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Biological Assessments (BAs)

1. Required for “major construction activities” defined under NEPA
2. Very useful for both formal and informal consultations
3. Defines Action Area of the project
4. Provide information on all project components, and analysis on their effects to listed species and CH
5. No set format

Biological Assessment Format

 Endangered Species
Midwest Region

Midwest Endangered Species Home

Section 7 Home

Section 7: A Brief Explanation

Section 7: Technical Assistance

Biological Assessment Guidance

Section 7 Consultation Handbook

Contact Us



Connect With Us









Search

Section 7 Consultation Guidance for Preparing a Biological Assessment

[PDF Version](#)

This guidance will help project proponents document their analyses for actions that "may affect" listed species. Federal agencies are required to determine whether their actions may affect listed or proposed species and designated and proposed critical habitat (henceforth, referred to as protected resources). Once a "may affect" determination is made, the Federal agency must either request our concurrence with a "may affect, but not likely to adversely affect" finding or request initiation of formal consultation¹. Both require a written analysis to be submitted to us. This analysis is typically transmitted in a document referred to as a Biological Assessment or Biological Evaluation. The former is defined in regulation and is required under specific circumstances². The latter is a generic term used to document analyses and Section 7 determinations when a Biological Assessment is not required. Both documents are for the same purpose³, and hence for this guidance, we will use only the term Biological Assessment.

Biological Assessments (BA) may serve multiple purposes, but the primary role is to document an agency's conclusions and the rationale to support those conclusions regarding the effects of their proposed actions on protected resources. Although there are no statutory or regulatory mandated contents for a BA, recommended elements are identified at 50 CFR §402.12(f). The bulleted list below highlights the elements that are essential for our review of your project.

- Project description - Describe the what, when, where, and how of the project. Describe (1) **what** the project or action is; (2) **where** the project is (refer to attached maps); (3) **when** the action is going to take place, time line/implementation schedules; (4) **who** is going to do the action and under what authority, include name and address of the applicant; and (5) **how** the action will be accomplished—e.g., bulldozer, pile driver, feller-buncher, chain saw, steam roller. If it is multi-phased, describe the what, when, where and how of each phased separately. Identify any conservation measures that will be implemented to avoid, reduce, or eliminate adverse effects or that would benefit the protected species or critical habitat.
- Describe the project area - For determining whether a species or critical habitat "may be present," it is necessary to delineate the "action area." Action area is defined as all areas that may be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action. It encompasses the geographic extent of environmental changes (i.e., the physical, chemical and biotic effects) that will result directly and indirectly from the action. Action area is typically larger than the area directly affected by the action.
- Describe the physical and biological attributes of the action area (e.g., topography, vegetation,

https://www.fws.gov/midwest/endangered/section7/ba_guide.html



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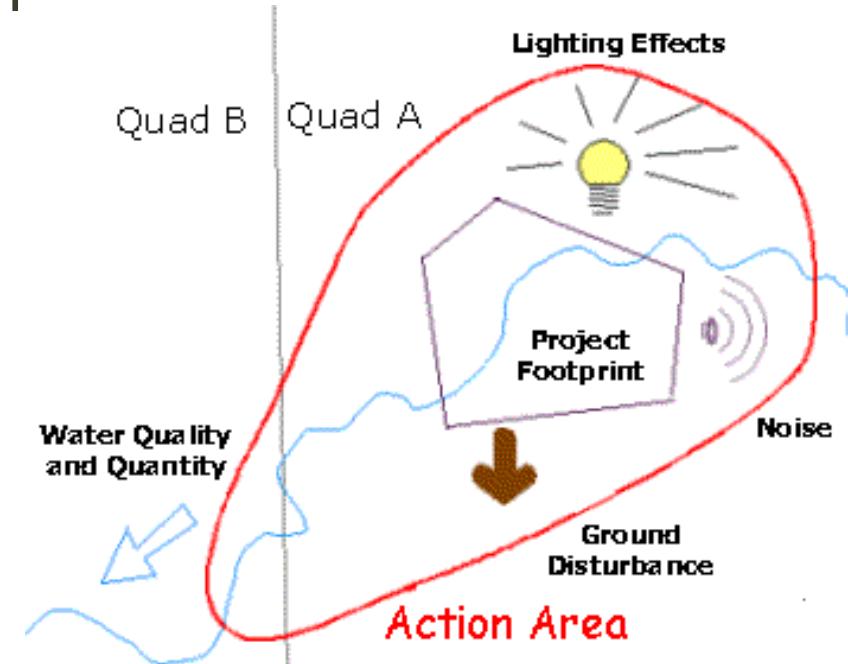
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Biological Assessment

Action area - geographic area encompassing all the physical, chemical, and biological changes that will occur **directly or indirectly** from the proposed action.

The action area is typically larger than the footprint of the project, and its direct impacts.



[https://www.fws.gov/midwest/
endangered/section7/ba_guide.html](https://www.fws.gov/midwest/endangered/section7/ba_guide.html)



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In summary... only few steps

- Establish Federal nexus
- Determine species/habitat presence
- Determine effects within action area
- Develop conservation measures
- Submit complete consultation package to USFWS
- End of consultation:
 - Informally - NLAA / Concurrence Letter (30 days)
 - Formally - MLAA / Biological Opinion (135 days)



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Emergency Consultation

- An act of God, a disaster, or needed immediately for national defense or security (e.g., **Hurricane María!**)
- Initiation occurs after the emergency is under control
- Need to notify USFWS as soon as possible
- Although after the fact, treated like any other consultation





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Are you done once consultation is completed?

- If projects are not constructed, consultations do not expire (if circumstances have not changed)
- Projects may change, animals may move, plants can be found in new places, etc.
- These type of changes may require re-initiation



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When to re-initiate?

- If the level of incidental take is exceeded;
- New information reveals effects in a manner or extent not previously considered;
- Action is modified and causes effects not considered;
- New or additional listed species or designated critical habitat that may be affected

REGION 4
INTRA-SERVICE SECTION 7 BIOLOGICAL EVALUATION FORM

Originating Person: Ramón L. Rivera Lebrón
Telephone Number: (787) 772-2028 E-Mail: rlrivera@drna.pr.gov
Date: May 10, 2018

PROJECT NAME:

I. Service Program: Federal Aid

- Clean Vessel Act
- Coastal Wetlands
- Endangered Species Section 6
- Partnerships for Wildlife
- Sport Fish Restoration
- Wildlife Restoration
- Farm Bill Section 390

II. State/Agency: P.R. Department of Natural and Environmental Resources

III. Station Name: Puerto Rico

IV. Description of Proposed Action (attach additional pages as needed):

The proposed project will provide landowners with up-to-date management information and techniques to sustain and enhance wildlife habitats on their properties. Also, personnel will collaborate and provide technical advice to projects conducted by the Puerto Rico Department of Natural and Environmental Resources (PRDNER) and other leading agencies to set and implement conservation measures that may improve or restore the quality of the habitats on their lands. In addition, we will also inform them about the need for conserving wildlife habitat, and also about the federal and commonwealth programs available to implement conservation measures on their land such as Partners for Wildlife, Coastal Program, Environmental Quality Incentive Program and Forest Stewardship.

V. Pertinent Species and Habitat:

A. Include species/habitat occurrence map:



Figure 1. Activities take place through the Island.

B. Complete the following table:

SPECIES/CRITICAL HABITAT	STATUS ¹
Culebra Island Giant Anole, (<i>Anolis roosevelti</i>)	E
Yellow-shouldered Blackbird, (<i>Agelaius xanthomus</i>)	E
Mona Boa, (<i>Epicrates monensis monensis</i>)	T
Puerto Rican Boa, (<i>Epicrates inornatus</i>)	E
Virgin Islands Tree Boa (<i>Epicrates monensis granti</i>)	E
Golden Coqui, (<i>Eleutherodactylus jasperi</i>)	T
Coqui Llanero, (<i>Eleutherodactylus juanariveroi</i>)	E
Monito Gecko, (<i>Sphaerodactylus micropithicus</i>)	E
Guajon (<i>Eleutherodactylus cooki</i>)	T
Puerto Rican Broad-winged Hawk, (<i>Buteo platypterus brunnescens</i>)	E
Puerto Rican Sharp-shinned Hawk, (<i>Accipiter striatus venator</i>)	E
Mona ground Iguana, (<i>Cyclura stejnegeri</i>)	T
West Indian Manatee, (<i>Trichechus manatus</i>)	T
Puerto Rican Nightjar, (<i>Caprimulgus noctitherus</i>)	E
Puerto Rican Parrot, (<i>Amazona vittata</i>)	E
Puerto Rican Plain Pigeon, (<i>Columba inornata wetmorei</i>)	E
Hawksbill Sea turtle, (<i>Eretmochelys imbricata</i>)	E
Sea turtle, leatherback (<i>Dermochelys coriacea</i>)	E
Tern, roseate (<i>Sterna dougallii dougallii</i>)	T
Puerto Rican Crested Toad, (<i>Peltophryne lemur</i>)	T
Elfin-woods Warbler, (<i>Setophaga angelae</i>)	T
Bariaco, (<i>Trichilia triacantha</i>)	E
Vahl's Boxwood, (<i>Buxus vahlii</i>)	E
Capa rosa, (<i>Callicarpa ampla</i>)	E
Higo Chumbo, (<i>Harrisia portoricensis</i>)	T
Chupacallos, (<i>Pleiodendron macranthum</i>)	E
Cobana negra, (<i>Stahlia monosperma</i>)	T
Erubia (<i>Solanum drymophilum</i>)	E
Elfin tree Fern, (<i>Cyathea dryopteroides</i>)	E
Beautiful Goetzea, (<i>Goetzea elegans</i>)	E
Higuero de sierra, (<i>Crescentia portoricensis</i>)	E
Cook's Holly, (<i>Ilex cookii</i>)	E
Palma de Manaca, (<i>Calyptronoma rivalis</i>)	T
No common name (<i>Adiantum vivesii</i>)	E
No common name (<i>Aristida chaseae</i>)	E
No common name (<i>Auerodendron pauciflorum</i>)	E
No common name (<i>Catesbea melanocarpa</i>)	E
No common name (<i>Chamaecrista glandulosa var. mirabilis</i>)	E

VI. Location (attach map):

- A. Ecoregion Number and Name:
- B. County and State: Puerto Rico
- C. Section, township, and range (or latitude and longitude): Island-wide
- D. Distance (miles) and direction to nearest town:
- E. Species/habitat occurrence:

VII. Determination of Effects:

- A. Explanation of effects of the action on species and critical habitats in item V.
- B (attach additional pages as needed):

SPECIES/ CRITICAL HABITAT	IMPACTS TO SPECIES/CRITICAL HABITAT
See Table B above.	We expect positive impacts on species as actions are meant to enhance and restore habitat for all wildlife, including listed species.

B. Explanation of actions to be implemented to reduce adverse effects:

SPECIES/ CRITICAL HABITAT	ACTIONS TO MITIGATE/MINIMIZE IMPACTS
	If any listed species is found in the project area, the Caribbean Ecological Services Field Office will be immediately contacted for further assistance.

VIII. Effect Determination and Response Requested:

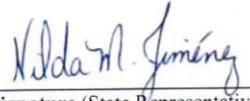
SPECIES/	DETERMINATION ¹			RESPONSE ¹
	NE	NA	AA	
See Attached List.	X			

¹DETERMINATION/RESPONSE REQUESTED:

NE = no effect. This determination is appropriate when the proposed action will not directly, indirectly, or cumulatively impact, either positively or negatively, any listed, proposed, candidate species or designated/proposed critical habitat. Response Requested is optional but a "Concurrence" is recommended for a complete Administrative Record.

NA = not likely to adversely affect. This determination is appropriate when the proposed action is not likely to adversely impact any listed, proposed, candidate species or designated/proposed critical habitat or there may be beneficial effects to these resources. Response Requested is a "Concurrence".

AA = likely to adversely affect. This determination is appropriate when the proposed action is likely to adversely impact any listed, proposed, candidate species or designated/proposed critical habitat. Response Requested for listed species is "Formal Consultation". Response Requested for proposed or candidate species is "Conference".



signature (State Representative)

1 June 2018
date

ES Coordinator
title

IX. Reviewing Division of Federal Aid Staff Evaluation:

- A. Concurrence _____ Nonconcurrence _____
- B. ESA Section 7 Coordinator Consulted _____
- C. Remarks (attach additional pages as needed):

signature _____
_____ date
title _____ office

X. Reviewing Ecological Services Office Evaluation:

- JACB*
- A. Concurrence Nonconcurrence _____
 - B. Formal consultation required _____
 - C. Conference required _____
 - D. Informal conference required _____
 - E. Remarks (attach additional pages as needed):

Marilyn A. *6/6/18*
signature date
Deputy Field Supervisor *CESTO*
title office

XI. Programmatic Assistant Regional Director -- Division of Federal Aid:

- A. Concurrence _____ Nonconcurrence _____
- _____
signature _____ date



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Technical Assistance: Non Federal Projects

- Implementation of conservation measures is essential to conserve listed species
- If **Take** of listed wildlife species is anticipated, an Incidental Take Permit may be needed
- Section 10 Permits are voluntary
- Always comply with State laws and regulations



**U.S. Fish and Wildlife Service
Caribbean Ecological Services Field Office
P.O. Box 491
Boquerón, P.R. 00622**

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