

*File cabinet*

- **For Conserving listed Species,  
Talk is Cheaper than We Think**

*The Consultation Process Under  
the Endangered Species Act*

February 1992

Prepared by Donald Barry, Leslie Harroun,  
and Christine Halvorson



**For Further Information Contact:**

**Leslie Harroun (202) 861-8341  
Michael O'Connell (202) 778-9576**

FOR CONSERVING LISTED SPECIES, TALK IS CHEAPER THAN WE THINK:  
THE CONSULTATION PROCESS UNDER  
SECTION 7 OF THE ENDANGERED SPECIES ACT

EXECUTIVE SUMMARY

Section 7 of the Endangered Species Act (ESA) sets out the responsibilities and obligations of federal agencies with regard to the conservation of endangered and threatened species. Among other things, Section 7 requires federal agencies to consult with the United States Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS) before authorizing, funding or carrying out activities which may adversely affect listed species or their critical habitat. Based upon recent comments from critics of the ESA, one might conclude that Section 7 of the Act is annually derailing hundreds of meritorious and urgently needed projects throughout the country. To assess the validity of these claims, World Wildlife Fund (WWF) has conducted a major study of the Section 7 consultation process as it affects projects within the United States. This report summarizes WWF's findings which clearly demonstrate that the allegations against Section 7 are unfounded.

WWF has collected and analyzed Section 7 consultation data from every regional office of FWS and NMFS. These data were obtained from FWS through the Freedom of Information Act and from materials supplied by NMFS to the Merchant Marine and Fisheries Committee in the House of Representatives. This study covers a five year period from Fiscal Year 1987 through Fiscal Year 1991. This period was chosen to compliment a consultation study conducted by the National Wildlife Federation (NWF) covering the years 1979 through 1986. The present study tabulates by region and by year, the number of informal and formal consultations conducted under Section 7, the number of "jeopardy" Biological Opinions issued thereunder, and the ultimate effect of such opinions upon the proposed action. subject to consultation.

FWS CONSULTATION RESULTS

- During the five year period covered by this study, FWS conducted 71,560 informal and 2,000 formal consultations under Section 7 of the ESA.
- Out of the 2,000 formal consultations, FWS issued 350 jeopardy Biological Opinions, a figure comprising 17.5% of all formal consultations.
- Almost two-thirds of the 350 jeopardy Biological Opinions issued during the course of this study reflect

the abnormal effects of consultation on only two proposed agency actions: a massive consultation request from EPA involving 113 chemicals and 169 activities under its pesticide program, and a request from the Bureau of Land Management (BLM) for separate Biological Opinions for 175 individual timber sales in Oregon for Fiscal Year 1991. The former consultation request resulted in 169 separate jeopardy Biological Opinions and the latter request generated 52 jeopardy Opinions. These two consultation requests alone accounted for 221 of the 350 jeopardy Biological Opinions, or approximately 63% of the total. All 169 activities receiving jeopardy Opinions under the EPA pesticide program are moving forward through the adoption of reasonable and prudent alternative labeling requirements suggested by FWS. Of the 52 BLM timber sales that received jeopardy Opinions, eight sales were dropped due to the ESA and exemptions have-been sought for the 44 other sales from the ESA Exemption Committee.

- If the Biological Opinions for the EPA pesticide and BLM Oregon timber sale consultations had been issued on a programmatic, instead of an individual activity basis, only 2 jeopardy Opinions would have been issued instead of 221. The number of jeopardy Biological Opinions for the five year period would have then dropped from 350 to 131. Out of 131 jeopardy Opinions, the annual average of such Opinions would have been reduced to only 26 jeopardy Opinions nationwide per year, with the vast majority of the activities covered by those Opinions ultimately being completed.

Of the 350 jeopardy Biological Opinions issued, FWS has only positively identified 18 projects or activities that received jeopardy Biological Opinions and were ultimately blocked, cancelled or terminated [due to](#) Section 7. The vast majority of the remaining jeopardy Opinions applied to activities that were completed ultimately through the adoption of "reasonable and prudent alternatives" or modifications which avoided violating the ESA.

- The 18 activities that were blocked, cancelled or terminated represent less than 1% of the 2,000 agency actions that were subject to formal consultation, and average out to less than 4 activities nationwide, per year, that were stopped because of Section 7.
- The FWS has identified 35 additional proposals that received jeopardy Biological Opinions, wherein the redesign of the activity is still under discussion or

the project has been deactivated or put on hold for unknown reasons. Assuming an unlikely "worst case" scenario in which all 35 of these activities ultimately are added to the list of proposals blocked or cancelled by Section 7, blocked projects would still compose only 2.65% of all formal consultations undertaken during the length of the study.

Much of the United States had little or no conflict under Section 7. The FWS Regions for New England, the Midwest, the Rocky Mountains, the Southwest and Alaska, issued only 26 jeopardy Biological Opinions during the last five years. This averages to slightly more than 5 jeopardy Biological Opinions per year, for close to three-fourths of this country's land area. Only 8 of the 26 jeopardy Biological Opinions resulted in blocked, terminated or cancelled activities, an average of only 1.6 blocked activities per year, for most of this country.

#### NMFS CONSULTATION RESULTS

During the five year period of this study, NMFS conducted 788 informal and 248 formal consultations. Out of the 248 formal consultations, NMFS issued only three jeopardy Biological Opinions, an average of only 1.2% of the Biological Opinions NMFS issued. Of the three jeopardy Biological Opinions, one of the covered activities was completed through the adoption of reasonable and prudent alternatives, one activity is on hold pending completion of biological studies, and one activity was blocked due to Section 7.

#### CONCLUSION

This study demonstrates that from Fiscal Year 1987 through Fiscal Year 1991, irreconcilable conflicts occurred very rarely under Section 7 consultation. The vast majority of federal activities subject to consultation successfully proceeded to completion while accommodating the needs of endangered and threatened species. Section 7 has permanently blocked only a minute fraction of the activities reviewed in the consultation process.

Whatever the explanation, it is crucial that the future course of the ESA be based upon facts, not fiction. It is the goal of this study to contribute an essential set of facts for this debate.

THE CONSULTATION PROCESS UNDER SECTION 7  
OF THE ENDANGERED SPECIES ACT

GENERAL BACKGROUND

The loss of plant and animal species due to human activity is occurring at a dramatically accelerating rate throughout the planet. Even within the United States, this has been a serious problem. In its 1990 Annual Report, the President's Council on Environmental Quality highlighted some sobering facts:

- "In the nearly 500 years since Columbus sailed to the New World, approximately 500 plant and animal species are known to have become extinct in the United States, including the Roosevelt elk, the California grizzly, and the great auk.
- "Within the past decade, at least 34 species, subspecies, or vertebrate populations have become extinct while awaiting consideration for federal protection.
- "A recent 50-state inventory suggests that a total of 9,000 U.S. plant and animal species may be currently at risk. The problem is national in scope . . . [and more] than species are being lost. Whole plant and animal communities -- integrated and resilient systems -- are being threatened."

- Human activity has increased significantly the naturally occurring rate of extinction in the United States, possibly by as much as 10 times the historical rate, and it promises to accelerate (Council on Environmental Quality, 1990). Poorly
- planned development, unsustainable agricultural and forestry practices, widespread pollution, the overutilization or mismanagement of complex ecosystems like the Florida Everglades, and environmental tragedies such as the Exxon Valdez oil spill, all contribute to the degradation of vital habitat. Increasingly, this degradation has imperiled the plant and animal communities dependent upon these areas.

The Endangered Species Act (ESA) is arguably the most powerful piece of environmental legislation ever enacted. Its goals are straightforward and direct: to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved and to provide a program for the conservation of such endangered and threatened species (Endangered Species Act of 1973 (16 U.S.C.1531)). As a central means of accomplishing the goals of the ESA and halting species extinction, Congress placed special responsibilities on federal

agencies to insure that the federal government would no longer contribute to the extermination of a species.

These responsibilities fell into two categories under Section 7 of the ESA. First, federal agencies were directed to use their existing authorities to promote the conservation of listed species (16 U.S.C. **1536(a)(1)**). Second, federal agencies were precluded from authorizing, funding, or carrying out activities which were likely to jeopardize the continued existence of a listed species or adversely modify or destroy its critical habitat (16 U.S.C. 1536(a)(2)).

As a means of assisting federal agencies with complying with this latter responsibility, Congress directed that agencies first consult with the fish and wildlife conservation experts of the federal government -- the U.S. Fish and Wildlife Service (**FWS**) and the National Marine Fisheries Service (NMFS) -- before initiating projects that could adversely affect listed species or their habitats. A logical "look before you leap" strategy for environmental planning, the consultation process under Section 7 has rapidly become the most effective, and hence, controversial provision of the ESA.

#### THE SECTION 7 CONSULTATION PROCESS

The consultation process typically involves an assessment of the scope of the action, the area to be affected and the degree of impact the proposed project may have on a listed species or its habitat. An action that would typically result in "jeopardy" is one that:

**"...reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species."** (50 C.F.R. 402.02).

Section 7 directs **FWS and NMFS to provide federal agencies** with expert biological advice to help those agencies comply with their obligation to avoid jeopardizing listed species. Consultation under Section 7 may be either "informal" or "formal". Informal consultation provides just what the name implies: a quick look or abbreviated assessment of a proposed project as a means of determining whether formal consultation is **required. If, as a result of informal consultation, it is concluded to be unlikely that the proposed project may adversely affect a listed species or its habitat, then the requirement for formal consultation is eliminated and the action may proceed.**

If, on the other hand, an action agency preliminarily finds that a proposed action "may adversely affect" a listed species or its critical habitat, it is required by regulation to enter into formal consultation with FWS or NMFS. Formal consultation must be requested in writing. After formal consultation has been initiated, FWS or NMFS generally has 90 days to issue a written "Biological Opinion" outlining its views and assessment of the proposed activity's likely impact on listed species or their habitat.

If the Biological Opinion does not include a finding of "jeopardy", the action agency is free to proceed with the proposed activity. If, however, FWS or NMFS finds that the proposed project is likely to jeopardize the continued existence of a listed species or adversely modify or destroy its critical habitat, they are obligated to suggest such "reasonable and prudent alternatives" to the original proposal as may exist. The goal is to allow a somewhat altered version of the project to proceed without violating the requirements of Section 7.

Consultation regulations require that reasonable and prudent alternatives must be consistent with the intended purpose of the action, lie within the scope of the action agency's legal authority and jurisdiction, and be economically and technologically feasible (50 C.F.R. 402.02). Although the action agency makes the final decision about whether and how to proceed with a proposal in light of a jeopardy Opinion, most agencies modify the proposed action in some fashion to address the concerns raised by FWS or NMFS.<sup>1</sup> Thus, most projects are ultimately completed despite the initial receipt of a jeopardy Biological Opinion.

#### THE TRACK RECORD OF SECTION 7 CONSULTATION

Critics of the ESA charge that the Act fails to balance the conservation needs of endangered species with the Nation's economic and social needs. More particularly, they complain that the consultation process is unduly rigid and is blocking hundreds, if not thousands, of badly needed federal actions around the country. This would be alarming if it were true. An objective analysis of Section 7 consultation data, however, demonstrates that these claims are not supported by the facts.

Through the filing of Freedom of Information Act requests with the various Regional Offices of FWS and a review of materials submitted by NMFS to the Merchant Marine and Fisheries Committee of the House of Representatives, World Wildlife Fund has collected and analyzed consultation data from around the country in an effort to determine the actual effect of the consultation process on federal agencies from Fiscal Years 1987 through 1991. This period was chosen to compliment a

consultation study conducted by the National Wildlife Federation (NWF) covering the years 1979 through 1986. The data collected for this analysis are in the appendices. The consultations are categorized by fiscal year (Appendix A) and by region (Appendix B), and are summarized in Appendix C. The results of this analysis, recounted below, are striking.

### FWS CONSULTATION RESULTS

During the five year period covered by this study, FWS conducted 71,560 informal and 2,000 formal consultations under Section 7 of the ESA.<sup>3</sup> According to the Service, informal consultations have increased nine-fold and formal consultations have nearly doubled between 1987 and 1991.

Out of the 2,000 formal consultations, the Service issued 350 jeopardy Biological Opinions. This means that 17.5% of all Biological Opinions issued during this period were jeopardy Opinions. Of the 350 proposed federal agency actions that received jeopardy Opinions, however, the FWS has only positively identified 18 proposed activities that were cancelled, blocked or terminated due to Section 7. Thus, during the study period, out of 2,000 FWS formal consultations, only 18 (less than 1%) resulted in a proposed activity being eliminated because of Section 7. This averages out to less than 4 terminated federal activities per year, nationwide.

In addition to the 18 confirmed terminated activities, FWS files have identified another 35 jeopardy Opinions over the last five years where either the design of the activity is still under discussion or the proposal has been deactivated or put on hold for unknown reasons. Thus, too little information is known about these cases at the present time to determine whether they should be added to the list of proposals that were terminated, blocked or cancelled due to the ESA. Assuming for purposes of analysis a **worst** case scenario where all 35 proposals ultimately are **blocked** due to the ESA (an assumption that is very unlikely), when the 35 cases are added to the 18 confirmed terminated proposals, the 53 blocked projects would still only account for 2.65% of all activities that were the subject of formal consultation. Under this worst case scenario, the 53 terminated activities would translate into a **nationwide average of approximately 10.5 terminated projects per year.**

The exceptionally low number of actual blocked projects initially may be surprising, given the 350 jeopardy Opinions that were issued during the five year study period. There are various reasons, however, why focusing exclusively on the number of jeopardy Biological Opinions can leave one with an inaccurate picture of the impact of Section 7 on proposed federal agency actions.



First, it has been mentioned previously that if consultation results in a finding of jeopardy, FWS is required to suggest such reasonable and prudent alternatives to the original proposed project that would allow it to move forward in compliance with Section 7, and still achieve the project's overall goals and objectives. In fact, during the period of this study, the clear majority of projects receiving jeopardy Biological Opinions incorporated the reasonable and prudent alternatives suggested by the Service, and subsequently were completed. In addition, a number of other projects receiving jeopardy Opinions were dropped or terminated by their sponsors for reasons unrelated to the ESA.

The 350 jeopardy Opinion figure also reflects the effects of two out-of-the-ordinary requests for consultation; a massive request from the U.S. Environmental Protection Agency (EPA) regarding pesticide registrations, and an additional broad-based request from the Bureau of Land Management (BLM) regarding old growth timber sales in Oregon.

With regard to the pesticide registration request, FWS was asked to consult on the effects of 113 chemicals slated for 169 pesticide uses, each use considered to be a separate "federal action". This pesticide consultation was handled out of the Washington D.C. Endangered Species Office which is considered by FWS to be part of its headquarters region known as Region 9. The Service found that each proposed action or use had the potential to jeopardize at least one listed species and accordingly issued 169 jeopardy Opinions on the matter in 1989. However, EPA subsequently adopted the "reasonable and prudent alternative" suggested by FWS involving modifications to pesticide labels. The net result was that none of the pesticide uses were blocked despite the issuance of the 169 jeopardy Opinions.

With regard to the 1991 BLM timber sale program in Oregon, BLM originally asked the Service to consult on 175 proposed sales. Unlike the programmatic consultation process used by the U.S. Forest Service for its timber program in the Pacific Northwest (which resulted in the issuance of only one Biological Opinion covering the entire program), BLM requested that Region 1 of FWS issue a separate Biological Opinion for each individual sale regardless of size. Fifty-two of these sales subsequently received separate jeopardy Opinions.

By requesting separate Biological Opinions for each sale and forgoing the programmatic approach to consultation followed by the Forest Service, BLM triggered a dramatic increase in the number of Biological Opinions for Region 1 for Fiscal Year 1991. Instead of one jeopardy Opinion, 52 were generated for the BLM program.

When added to the 169 jeopardy Opinions resulting from the EPA pesticide consultation, these two actions alone accounted for 221 of the 350 jeopardy Opinions issued by FWS during the last five years, a total of 63% of such Opinions. If only one programmatic Biological Opinion had been issued for both of these consultation requests, the number of jeopardy Opinions issued nationwide during that period would have dropped dramatically from 350 to 131. Moreover, a drop to 131 jeopardy Opinions would have resulted in an average of only 26 jeopardy Opinions issued nationwide, per year during the length of this study.

### Regional Variations

Within the overall figures for informal and formal consultations, significant differences exist among the various regional offices of the Service. This is due in large part to the varying number of listed species in each region and the amount of development that is occurring in those areas.

Region 1 includes the states of Washington, Idaho, Oregon, California, Nevada and Hawaii. These states host many listed species, including the endangered California condor, the desert pupfish, the southern sea otter, the short-tailed albatross, the New Mexican ridge-nosed rattlesnake, and the Oregon silverspot butterfly. Region 1 generated 79 jeopardy Opinions between 1987 and 1991, the highest total number of any regional office. Region 1 also had the largest number of proposed federal actions cancelled or blocked by the ESA. Eight timber sales on BLM land in Oregon were dropped due to **FWS** warnings that logging in those areas would jeopardize the **northern** spotted owl. In addition, 44 other timber sales in Oregon were referred by BLM to the Endangered Species Exemption Committee, for a waiver of the provisions of the ESA. The fate of these 44 timber sales has not been determined as of the date of this report.

Region 4 has generated almost **as** many jeopardy Biological Opinions as Region 1. Region 4 contains the states of Arkansas, Louisiana, Kentucky, Tennessee, Mississippi, Alabama, Georgia, Florida, North Carolina and South Carolina, and Puerto Rico and the U.S. Virgin Islands. These states contain a high number of listed species such as the Florida panther, the Florida manatee, the red-cockaded woodpecker, various endangered and threatened sea turtles and the Mississippi **sandhill** crane. As a result, the 76 jeopardy Opinions issued by Region 4 generated the highest average number of jeopardy Opinions per year of any region. (It must be remembered that Region 1's five year total of 79 jeopardy Opinions is primarily the result of 52 jeopardy Opinions in 1991 alone due to the **BLM** timber sale consultation.)

Even so, out of the 76 jeopardy Opinions, Region 4 has only positively identified two projects that were blocked or terminated due to the ESA. Both of these actions concerned projects involving the Corps of Engineers that posed a serious threat to the manatee. Region 4 has identified another 13 proposed activities that it classifies as "deactivated", that is, proposals that have been put on hold, but where information is insufficient for FWS to determine whether they have been permanently terminated or cancelled. Finally, three projects in the Region received jeopardy Opinions without any reasonable and prudent alternatives and attempted to proceed without any further modification. Two of these projects are the subject of unresolved citizen lawsuits and the third project was completed. The remaining 58 projects receiving jeopardy Opinions eventually were completed through the adoption of reasonable and prudent alternatives suggested by the Service.

Whereas FWS Regions 1 (Pacific coast states) and 4 (Southeastern states) accounted for most of the controversy and jeopardy Opinions during the last five years, the other regions of the country experienced little conflict at all. Region 2 is comprised of the Southwestern states of New Mexico, Arizona, Texas and Oklahoma. This Region contains such species as the jaguarundi and ocelot, the desert tortoise, the Mount Graham red squirrel and the Apache trout. Region 2 issued only eight jeopardy Opinions in the last five years, averaging 1.6 such Opinions per year. Of the eight jeopardy Opinions, only three resulted in blocked or terminated activities. This averages to less than one blocked activity per year in the Region due to Section 7. Two of the blocked projects did not proceed because no reasonable and prudent alternatives were available. The third project, involving a Forest Service plan for the management of the endangered red-cockaded woodpecker, was blocked by a federal court order for being inadequate under the requirements of the ESA.

Region 3, covering most of the Midwest, had even less controversy. This Region contains the states of Minnesota, Wisconsin, Iowa, Illinois, Michigan, Indiana, Ohio and Missouri. The area is the home of various listed species like the eastern timber wolf, the bald eagle and several endangered mussels. During the period of this study, Region 3 issued only three jeopardy Opinions, resulting in only one confirmed instance where a proposed action was terminated or cancelled due to Section 7. In that case, state intervention forced the applicant to consider alternatives to the proposed project beyond what had been requested by the FWS.

Region 5, covering the central Atlantic and New England states, provides habitat for listed species like the piping plover, the Virginia round-leaf birch and the Virginia big-eared bat. This Region generated only 6 jeopardy Opinions during the

past five years, averaging slightly more than one such Opinion per year. Of the six projects that received jeopardy Opinions, however, only one has been confirmed by the Service as having been terminated or cancelled due to Section 7.

Region 6, covering a huge expanse of land in the central plains and Rocky Mountains, contains the states of North and South Dakota, Montana, Wyoming, Colorado, Utah, Nebraska and Kansas. This Region includes the habitat of species like the grizzly bear, the Northern Rocky Mountain gray wolf, the black-footed ferret, the Wyoming toad and the Colorado River squawfish. Over the last five years, Region 6 issued only nine jeopardy Biological Opinions. As a result of these nine Opinions, only three proposed activities were permanently blocked or dropped because of Section 7. This averages to less than one blocked proposal per year, throughout the heart of the west. One of these projects involved consultation with EPA over the registration of strychnine. Following the issuance of a jeopardy Biological Opinion on the matter, the Eighth Circuit Court of Appeals enjoined the above-ground use of strychnine until such time as EPA could show that its use did not jeopardize identified listed species, like the jaguarundi, the ocelot, and the bald eagle.

Similarly, in 1990 EPA proposed using strychnine-treated eggs in Montana to control rabid skunks. The FWS again issued a jeopardy Opinion, this time for the grizzly bear, the Northern Rocky Mountain gray wolf, and the black-footed ferret, and the proposed project was dropped. The third action, a Bureau of Indian Affairs' 1991 prairie dog control program for the Cheyenne River and Rosebud Indian Reservations in South Dakota, was dropped as a result of threatened litigation based on the harm posed to the black-footed ferret. The remaining six proposals receiving jeopardy Opinions were ultimately completed after the adoption of the Service's recommended "reasonable and prudent alternatives".

Least contentious of all was Region 7, comprised of Alaska. This Region did not issue a single jeopardy Opinion out of 17 formal consultations during the last five years. Alaska has only a few endangered and threatened species like the short-tailed albatross and the Aleutian Canada goose. It also has the largest state land mass in the country with very little development. The combination of these two factors has resulted in few endangered species conflicts.

The net result is that for the last five years in the New England, Midwestern, Rocky Mountain, Southwestern and Alaskan regions of this country, only 26 jeopardy Opinions were issued, averaging five such Opinions per year across that entire area. Of those twenty-six jeopardy Opinions, only eight resulted in the confirmed termination, cancellation or blockage of a proposed

federal activity. This amounts to only 1.6 blocked proposals per year, over an area comprising more than three-fourths of this country.

Region 9, the Washington, D.C. office of the Fish and Wildlife Service, handles national rather than regional consultations, as well as consultations between other branches of FWS and the Service's Endangered Species Office. Although Region 9 has a fair number of formal consultations each year, it historically has issued very few jeopardy Opinions. Many of its Section 7 consultations involve the review of permit applications for activities conducted by FWS research biologists, precluding jeopardy to a species or its critical habitat before the action is ever undertaken.

As discussed previously, Region 9 received a consultation request from EPA which resulted in the issuance of 169 jeopardy Opinions for the EPA pesticide registration program. This program subsequently proceeded after EPA adopted a suggested reasonable and prudent alternative involving pesticide labeling. As a result, none of the pesticide uses have been blocked despite the issuance of the 169 jeopardy Opinions.

#### NMFS Consultation Results

The responsibility for listing and consulting on most marine species falls on the NMFS. NMFS has 6 regional offices throughout the country which handle Section 7 consultations. Marine species overseen by NMFS include but are not limited to the Hawaiian monk seal, eight species of whales, the harbor porpoise, and the Sacramento winter-run chinook salmon. As a group, the regional offices of NMFS conducted 788 informal and 248 formal consultations from Fiscal Year 1987 through Fiscal Year 1991. Only three proposals received jeopardy Opinions out of the 248 formal consultations. Of these three proposals, only one was blocked. One of the remaining two proposals receiving a jeopardy Opinion was completed after the adoption of NMFS's recommended reasonable and prudent alternatives, and the remaining project is on hold pending completion of biological studies. Over the five year period of this study, this averages to one-fifth of a proposed activity cancelled nationwide per year, due to the consultation process with NMFS.

#### CONCLUSION

This study demonstrates that from Fiscal Year 1987 through Fiscal Year 1991, irreconcilable conflicts occurred very rarely under Section 7 consultation. The vast majority of federal activities subject to consultation successfully proceeded to completion while accommodating the needs of endangered and threatened species.

The results of this study are consistent with the results of the earlier NWF consultation study covering the years 1979 through 1986. In both cases, less than 1% of the actions that were the subject of formal consultation were blocked because of Section 7. (The NWF study is summarized in testimony by the National Wildlife Federation before the Subcommittee on Environmental Protection of the Senate Committee on Environment and Public Works on Reauthorization of the Endangered Species Act, April 7, 1987.)

One can draw only one of two conclusions from this data: either the consultation process has not been rigorously applied by FWS and NMFS, or the consultation process is much less burdensome than critics of Section 7 claim. The former conclusion is speculative whereas the latter conclusion is inescapable. Under either scenario, however, the fact remains that Section 7 has permanently blocked only a minute fraction of the activities reviewed in the consultation process.

Whatever the explanation, it is crucial that the future course of the ESA be based upon facts, not fiction. It is the goal of this study to contribute an essential set of facts for this debate.

\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*

ENDNOTES:

1 Upon the receipt of a jeopardy Biological Opinion, the action agency is left with one of three choices: it can abandon the proposed activity altogether, it can alter the original proposal through the adoption of the Service's suggested reasonable and prudent alternatives, or it can try to ignore the jeopardy Biological Opinion and attempt to complete the activity as originally planned. As is demonstrated in this study, the first alternative very rarely occurs and the second alternative is followed in most instances, allowing the majority of proposed activities receiving jeopardy Opinions to proceed. An analysis of federal caselaw, which is beyond the scope of this study, would demonstrate that the third alternative - ignoring a jeopardy Biological Opinion altogether - is a high risk strategy that has rarely succeeded in court.

2 The General Accounting Office (GAO) is analyzing similar Section 7 consultation data from FWS and NMFS. WWF obtained copies of the data that FWS supplied GAO as a result of our Freedom of Information Act requests. While most of the figures that WWF and GAO received match, there are a few instances where they differ. These differences are generally due to variations in the information originally requested. For example, when it asked FWS for estimates of the level of informal consultation, GAO specifically narrowed its request to instances where informal consultation resulted in a written document. This excluded oral agency requests to FWS for endangered species technical assistance for preliminary agency environmental planning. In framing its request, however, WWF asked for estimates of informal consultation as that concept is defined pursuant to the Section 7 consultation regulations. These regulations state that informal consultations "include all discussions, correspondence, etc., between the Service and the Federal representative, designed to assist the Federal agency in determining whether formal consultation or a conference is required." (50 C.F.R. 402.13). No requirement for written documentation is included within this definition of informal consultation. As a result, the number of informal consultations recorded by FWS for WWF is much higher than those recorded for GAO.

3 Until the summer of 1991, the FWS used a fairly broad definition of what constituted "informal" consultation. As noted in footnote 2 of this study, FWS previously considered informal consultation to include, but not be limited to, oral requests for information on endangered and threatened species lists and the geographic range of listed species. WWF has been informed by the Service's Endangered Species Office in Washington that as of mid-1991, it no longer counts such "informational" requests as constituting informal consultation. That Office now only considers informal consultation to cover an action agency's request for FWS concurrence with an assessment that a proposed

activity will not adversely affect a listed species or its habitat - thereby avoiding the need for formal consultation. As this new and narrower definition of informal consultation is eventually adopted by all of the Service's Regional Offices, the level of reported informal consultations will drop accordingly.

4 FWS Consultation under the ESA is supervised and conducted by the 7 Regional Offices scattered about the country (Regions 1-7) and by the Washington D.C. Endangered Species Office which is part of the headquarters Region known as Region 9. Generally, Region 9 handles intra-Service consultations between one branch of FWS and the Endangered Species Office. On rare occasions, however, Region 9 will handle countrywide consultations such as the EPA pesticide registration request. Region 8 of the Fish and Wildlife Service is the Research Region, comprised of the various Service scientific research centers and facilities throughout the country, including the Office of Scientific Authority for the Convention of International Trade in Endangered Species (CITES). The Office of Scientific Authority does consult on a limited number of permit requests for the international import and export of listed plants and wildlife. Since the focus of this study is on the impact of Section 7 consultations on agency actions within the United States, the small number of Region 8 consultations were not included in this study.



APPENDIX A

U.S. FISH AND WILDLIFE SERVICE  
SECTION 7 CONSULTATIONS, BY FISCAL YEAR

FISCAL YEAR 2.987

Region	Informal	Formal	Jeopardy Opinions	Jeopardy/ Formal (%)	*Blocked Actions/ Formal (%)	
	1,611	73	7	9.59%	0.00%	(0)
II	1,072	14	2	14.29%	0.00%	(0)
III	1,374	2	0	0.00%	0.00%	(0)
IV	1,447	147	22	14.97%	0.00%	(0)
V	568	4	1	25.00%	25.00%	(1)
VI	1,777	21	1	4.76%	0.00%	(0)
VII	95	4	0	0.00%	0.00%	(0)
IX	0	40	0	0.00%	0.00%	(0)
<b>TOTALS</b>	<b>7,944</b>	<b>305</b>	<b>33</b>	<b>10.82%</b>	<b>0.33%</b>	<b>(1)</b>

\* A "Stocked Action" is a proposal that received a jeopardy Opinion and was withdrawn or terminated because of Section 7 of the ESA.

EVENTUAL OUTCOMES OF JEOPARDY OPINIONS

- Region 1 • The seven proposals receiving jeopardy Opinions proceeded with reasonable and prudent alternatives, or were cancelled for reasons unrelated to the ESA.
- Region 2 • Both proposals receiving jeopardy Opinions proceeded with reasonable and prudent alternatives.
- Region 3 • No jeopardy Opinions were rendered.
- Region 4 • Of the 22 jeopardy Opinions issued, 19 included reasonable and prudent alternatives. Eighteen of these actions proceeded with the suggested alternatives, or were cancelled for reasons unrelated to the ESA. Not enough information exists about the other action to determine its status. Reasonable and prudent alternatives were not available for three proposed actions, and these projects were deactivated pending further consideration, but were not withdrawn or terminated.

- Region 5** • The use of the pesticide carbofuran was blocked due to the resulting deaths of bald eagles in Virginia.
- Region 6** • The one proposal receiving a jeopardy Opinions proceeded with reasonable and prudent alternatives.
- Region 7** • No jeopardy Opinions were rendered.
- Region 9** • No jeopardy Opinions were rendered.

### **DISCUSSION**

Of 305 formal consultations and 33 jeopardy Opinions rendered in 1987, 28 proceeded with reasonable and prudent alternatives, or were cancelled for reasons unrelated to the ESA. Not enough information existed to determine the status of one activity, and three others were deactivated, but were not cancelled or withdrawn. Only one proposal was blocked;

The project that was blocked involved a FWS request that EPA reinitiate formal consultation on the pesticide carbofuran because of confirmed bald eagles deaths linked to the pesticide in Virginia in 1985 and 1986. The subsequent opinion consolidated regional responses and found jeopardy not only to the bald eagle, but to the Aplomado falcon in Texas as well. In response, EPA and the pesticide's manufacturer agreed to phase out granular carbofuran over a three year period. In addition, nine states in Region 5 were identified as sensitive zones, so major uses of carbofuran were stopped in Region 5 on September 1, 1987.

U.S. FISH AND WILDLIFE SERVICE  
SECTION 7 CONSULTATIONS, BY FISCAL YEAR

FISCAL YEAR 1988

Region	Informal	Formal	Jeopardy Opinions	Jeopardy/ Formal (%)	*Blocked Actions/ Formal (%)	(0)
	2,684	76	3	3.95%	0.00%	(0)
II	1,217	10	1	10.00%	0.00%	(0)
III	3,340	7	1	14.29%	0.00%	(0)
IV	1,874	183	15	8.20%	0.00%	(0)
V	991	2	0	0.00%	0.00%	(0)
VI	2,273	24	2	8.33%	4.17%	(1)
VII	74	4	0	0.00%	0.00%	(0)
IX	0	16	0	0.00%	0.00%	(0)
<b>TOTALS</b>	<b>12,453</b>	<b>322</b>	<b>22</b>	<b>6.83%</b>	<b>0.31%</b>	<b>(1)</b>

• A "Blocked Action" is a proposal that received a jeopardy Opinion and was withdrawn or terminated because of Section 7 of the ESA.

EVENTUAL OUTCOMES OF JEOPARDY OPINIONS

- Region 1 ■ All three proposals receiving jeopardy Opinions proceeded with reasonable and prudent alternatives, or were cancelled for reasons unrelated to the ESA.
- Region 2 • The one proposal receiving a jeopardy Opinion proceeded with reasonable and prudent alternatives.
- Region 3 ■ The one proposal receiving a jeopardy Opinion proceeded with reasonable and prudent alternatives.
- Region 4 • Of the 15 jeopardy Opinions issued, 12 included reasonable and prudent alternatives. Eight of these actions proceeded with the suggested alternatives, or were cancelled for reasons unrelated to the ESA. Not enough information exists about three actions to determine their status, and discussions continue on the other action. Reasonable and prudent alternatives were not available for three proposals that were deactivated pending further consideration, but were not cancelled or withdrawn.
- Region 5 • No jeopardy Opinions were rendered.
- Region 6 • Of the two proposals receiving jeopardy Opinions, one proceeded with reasonable and prudent alternatives, and the

other was blocked due to a court injunction.  
Region 7 ■ No jeopardy Opinions were rendered.  
Region 9 ■ No jeopardy Opinions were rendered.

#### DISCUSSION

Of 322 formal Opinions and 22 jeopardy Opinions issued in 1988, 14 proceeded with reasonable and prudent alternatives, or were cancelled for reasons unrelated to the ESA. Discussions continue on one project, inadequate information exists to determine the status of three projects, and three projects were deactivated, but not cancelled or withdrawn. Only one proposal was blocked.

The proposal that was blocked involved a request from EPA for consultation with the FWS regarding its registration of the pesticide strychnine. Following the issuance of a jeopardy opinion, the Eighth Circuit Court of Appeals enjoined its use until such time as EPA completed consultation with FWS and developed a use regime that did not result in jeopardy to various species at risk, such as the jaguarundi, the ocelot, and the bald eagle.

U.S. FISH AND WILDLIFE SERVICE  
SECTION 7 CONSULTATIONS, BY FISCAL YEAR

FISCAL YEAR 1989

Region	Informal	Formal	Jeopardy Opinions	Jeopardy/ Formal (%)	*Blocked Actions/ Formal (%)	
	3,455	71	5	7.04%	0.00%	(0)
II	1,487	17	2	11.76%	11.76%	(2)
III	5,088	2	0	0.00%	0.00%	(0)
IV	2,471	120	13	10.83%	0.00%	(0)
V	1,180	7	3	42.86%	0.00%	(0)
VI	2,637	36	0	0.00%	0.00%	(0)
VII	94	6	0	0.00%	0.00%	(0)
IX	0	187	**169	90.37%	0.00%	(0)
<b>TOTALS</b>	<b>16,412</b>	<b>446</b>	<b>192</b>	<b>43.05%</b>	<b>0.45%</b>	<b>(2)</b>

. A "Blocked Action" is a proposal that received a jeopardy Opinion and was withdrawn or terminated because of Section 7 of the ESA.

\*\* In 1989, EPA requested consultation on its extensive pesticide registration program. FWS evaluated 113 chemicals for 169 uses or federal actions, and found that each action had the potential to jeopardize at least one listed species. All the chemicals were subsequently registered in accordance with the Service's suggested reasonable and prudent alternatives.

EVENTUAL OUTCOMES OF JEOPARDY OPINIONS

- Region 1 ■ The five proposals resulting in jeopardy proceeded with reasonable and prudent alternatives, or were cancelled for reasons unrelated to the ESA.
- Region 2 • Both proposals were blocked: one due to a lack of reasonable and prudent alternatives, and the other due to an ESA related court order.
- Region 3 ■ No jeopardy Opinions were rendered.
- Region 4 ■ Of the 13 jeopardy Opinions issued, 12 included reasonable and prudent alternatives. Eleven of these proposals either proceeded with the suggested alternatives, or were cancelled for reasons unrelated to the ESA. Discussions continue on the other action. The one proposal for which a reasonable and prudent alternative was not available remains unresolved.

- Region 5** ■ All three proposals receiving jeopardy Opinions proceeded with reasonable and prudent alternatives.
- Region 6** • No jeopardy Opinions were rendered.
- Region 7** • No jeopardy Opinions were rendered.
- Region 9** • One hundred sixty-nine activities receiving jeopardy Opinions proceeded with reasonable and prudent alternatives.

### **DISCUSSION**

Of 446 formal consultations and 192 jeopardy Opinions rendered, 188 projects proceeded with reasonable and prudent alternatives, or were cancelled for reasons unrelated to the ESA. Discussions continue on one proposal, and one project for which a reasonable and prudent alternative was not available remains unresolved. Only two proposals were blocked.

The two blocked actions involved activities proposed by the Corps of Engineers and the Federal Highway **Administration**, and could not go forward because no reasonable and prudent alternatives were available to mitigate the harm posed to listed species.

As noted elsewhere in this study, the EPA pesticide registration program accounted for all 169 jeopardy Opinions issued for Region 9 between 1987 and 1991. Although Region 9 normally completes a fair number of formal consultations each year, it rarely issues jeopardy Opinions, as evidenced by a complete lack of jeopardy Opinions over the remainder of the five year period. Additionally, had the Biological Opinions been issued on a programmatic basis, rather than separately for each use, Region 9 would have issued only one jeopardy Opinion in 1989. This would have reduced the total number of jeopardy Opinions for the five year period from 192 to 24, or 8.63% of 278 total formal consultations.

U.S. FISH AND WILDLIFE SERVICE  
SECTION 7 CONSULTATIONS, BY FISCAL YEAR

FISCAL YEAR 1990

Region	Informal	Formal	Jeopardy Opinions	Jeopardy/ Formal (%)	*Blocked Actions/ Formal (%)	(0)
II	3,263	121	2	1.65%	0.00%	(0)
III	1,655	27	1	3.70%	0.00%	(0)
IV	2,925	3	15	9.93%	0.66%	(1)
V	3,514	151	3	9.09%	3.03%	(1)
VI	1,328	3	0.00%	0.00%	0.00%	(0)
VII	3,183	33	3	9.09%	3.03%	(1)
IX	68	1	0.00%	0.00%	0.00%	(0)
	16	0.00%	0.00%	0.00%	0.00%	(0)
<b>TOTALS</b>	<b>15,936</b>	<b>355</b>	<b>21</b>	<b>5.92%</b>	<b>0.56%</b>	<b>(2)</b>

• A "Blocked Action" is a proposal that received a jeopardy Opinion and was withdrawn or terminated because of Section 7 of the ESA.

EVENTUAL OUTCOMES OF JEOPARDY OPINIONS

- Region 1 • Both proposals receiving jeopardy Opinions proceeded with reasonable and prudent alternatives, or were cancelled for reasons unrelated to the ESA.
- Region 2 • The one proposal receiving a jeopardy Opinion proceeded with reasonable and prudent alternatives.
- Region 3 I No jeopardy Opinions were rendered.
- Region 4 • Of the 15 jeopardy Opinions issued, 10 included reasonable and prudent alternatives. Six of these proposed actions proceeded with the suggested alternatives, or were cancelled for reasons unrelated to the ESA. Discussions continue on the other four actions. Reasonable and prudent alternatives were not available for five proposals. Of these, one project is proceeding after issuance of a permit from the Corps of Engineers, three projects have been deactivated, but were not withdrawn or cancelled, and the Corps of Engineers denied a permit for one project based on Section 7.
- Region 5 • No jeopardy Opinions were rendered.

Region 6 m Of the three proposals receiving jeopardy Opinions, two proceeded with reasonable and prudent alternatives, and the third was blocked due to a court injunction.

Region 7 m No jeopardy Opinions were rendered.

Region 9 m No jeopardy Opinions were rendered.

#### DISCUSSION

Of 355 formal consultations and 21 jeopardy Opinions issued in 1990, 11 activities proceeded with reasonable and prudent alternatives, or were cancelled for reasons unrelated to the ESA. Discussions continue on four projects, three projects have been deactivated, but were not withdrawn or cancelled, and one project is proceeding without reasonable and prudent alternatives. Only two projects have been positively identified as having been blocked.

One blocked proposal involved a request from the Corps of Engineers for consultation on a permit application for a proposed marina in Region 4. The FWS issued a jeopardy Biological Opinion based on the harm likely to result to the manatee due to the increase in boat traffic expected from the project. The Corps denied the permit based on the jeopardy Opinion and the project was withdrawn. The second project, EPA's proposal to use strychnine treated eggs in Montana to control rabid skunks, was blocked due to Section 7 and a 1988 court injunction prohibiting the aboveground use of strychnine in Region 6.



**U.S. FISH AND WILDLIFE SERVICE  
SECTION 7 CONSULTATIONS, BY FISCAL YEAR**

**FISCAL YEAR 1991**

Region	Informal	Formal	Jeopardy Opinions	Jeopardy/ Formal (%)	*Blocked Actions/ Formal (%)
I	5,027	355	**62	17.46%	2.25% (8)
II	2,339	42	2	4.76%	2.38% (1)
III	2,695	4	2	50.00%	25.00% (1)
IV	3,053	119	11	9.24%	0.84% (1)
V	1,388	5	2	40.00%	0.00% (0)
VI	4,197	30	3	10.00%	3.33% (1)
VII	116	2	0	0.00%	0.00% (0)
IX	0	15	0	0.00%	0.00% (0)
<b>TOTALS</b>	<b>18,815</b>	<b>572</b>	<b>82</b>	<b>14.34%</b>	<b>2.10% (12)</b>

• A "Blocked Action" is a proposal that received a jeopardy Opinion and was withdrawn or terminated because of Section 7 of the ESA.

\*\* Unlike the programmatic consultation process used by BLM for its FY 1990 Pacific Northwest timber program, and by the U.S. Forest Service for its FY 1991 Pacific Northwest timber program (which resulted in one Biological Opinion for each agency), BLM requested a separate Biological Opinion for 174 individual timber sales in Oregon in FY 1991, regardless of size. Fifty-two of these timber sales subsequently received separate jeopardy opinions. BLM's approach to consultation thus resulted in an abnormally high number of Biological Opinions and jeopardy Opinions for Region 1 for FY 1991.

**EVENTUAL OUTCOMES OF JEOPARDY OPINIONS**

- Region 1 ■ Of the 62 proposals receiving jeopardy Opinions, eight BLM timber sales were dropped, 44 BLM timber sales were referred to the ESA Exemption Committee, and 10 proposals proceeded with reasonable and prudent alternatives, or were cancelled for reasons unrelated to the ESA.
- Region 2 • Of the two proposals receiving jeopardy Opinions, one proceeded with reasonable and prudent alternatives, and the other was blocked due to the unavailability of reasonable and prudent alternatives.
- Region 3 ■ Of the two proposals receiving jeopardy opinions, one proceeded with reasonable and prudent alternatives, and the other was blocked as a result of state intervention forcing

the applicant to consider alternatives beyond those suggested by FWS.

- Region 4 • Of the 11 jeopardy Opinions issued, three included reasonable and prudent alternatives. One of the three has proceeded with the suggested alternatives, and discussions continue on the two most recent proposals. Reasonable and prudent alternatives were not available for eight proposals. Four of these actions have been deactivated pending further consideration, but were not withdrawn or cancelled. The outcome of one remains unresolved, two have proceeded without acceptable alternatives and are the subject of citizen suits, and the last was cancelled as a direct result of Section 7.
- Region 5 • Of the two proposals receiving jeopardy Opinions, one proceeded with reasonable and prudent alternatives. The second, involving the construction of three piers on Cedar Island in Virginia, was issued with reasonable and prudent alternatives, but is so recent that the Corps of Engineers has not proceeded with any action. Two formal consultations are still pending.
- Region 6 • Of the three proposals receiving jeopardy Opinions, two proceeded with reasonable and prudent alternatives, and the last was dropped due to threatened litigation.
- Region 7 • No jeopardy Opinions were rendered.
- Region 9 • No jeopardy Opinions were rendered.

#### DISCUSSION

Of 572 formal consultations and 82 jeopardy Opinions issued in 1991, 16 proceeded with reasonable and prudent alternatives, or were cancelled for reasons unrelated to the ESA. Forty-four BLM timber sales have been referred to the ESA Exemption Committee. Discussions continue on three proposals, four projects have been deactivated but were not cancelled or withdrawn, one proposal remains unresolved, and two projects proceeded without reasonable and prudent alternatives and are the subject of citizen suits. Twelve activities have been positively identified as having been blocked.

With regard to blocked activities, in Region 2 an action proposed by the Federal Highway Administration was terminated because no reasonable and prudent alternatives were available. The construction of a barge loading facility in Region 3 was blocked when the state of Wisconsin intervened and forced the applicant to consider reasonable and prudent alternatives beyond those suggested by FWS. In Region 4 the Corps of Engineers denied a permit for a proposed project on the Jacksonville Naval Air Station because it imperiled the manatee. An action proposed in Region 6 by the Bureau of Indian Affairs was dropped as a result of threatened litigation focusing on the danger posed to the black-footed ferret. Region 1 contained the greatest number of blocked actions due to BLM's eight halted timber sales.

As noted in the table, the eight timber sales dropped by BLM

because of Section 7 represent 2.25% of all formal consultations conducted by Region 1 for fiscal year 1991. If BLM's request for an exemption for the additional 44 timber sales is ultimately denied by the ESA Exemption Committee, the average percentage of blocked projects to formal consultations for the five year period will rise to 9.79%. However, if consultation on BLM's fiscal year 1991 timber program had been conducted on a programmatic basis, as was the case for the Forest Service, then only one jeopardy Biological Opinion would have been issued for BLM sales in Oregon instead of 52 separate Opinions. This would have reduced the total number of jeopardy Opinions for fiscal year 1991 to 31, and would have reduced the percentage of blocked projects to formal consultation to 1.25%.

APPENDIX B

U.S. FISH AND WILDLIFE SERVICE  
SECTION 7 CONSULTATIONS, BY REGION

REGION 1

Fiscal Year	Informal	Formal	Jeopardy Opinions	Jeopardy/ Formal (%)	*Blocked Actions/ Formal (%)	
1987	1,611	73	7	9.59%	0.00%	(0)
1988	2,684	76	3	3.95%	0.00%	(0)
1989	3,455	71	5	7.04%	0.00%	(0)
1990	3,263	121	2	1.65%	0.00%	(0)
1991	5,027	355	**62	17.46%	2.25%	( <sup>8</sup> )
<b>TOTALS</b>	<b>16,040</b>	<b>696</b>	<b>79</b>	<b>11.35%</b>	<b>1.15%</b>	<b>(8)</b>

\* A "Blocked Action" is a proposal that received a jeopardy Opinion and was withdrawn or terminated because of Section 7 of the ESA.

\*\* Unlike the programmatic consultation process used by BLM for its FY 1990 Pacific Northwest timber program, and by the U.S. Forest Service for its FY 1991 Pacific Northwest timber program (which resulted in one Biological Opinion for each agency), BLM requested a separate Biological Opinion for 174 individual timber sales in Oregon in FY 1991, regardless of size. Fifty-two of these timber sales subsequently received separate jeopardy Opinions. BLM's approach to consultation thus resulted in an abnormally high number of Biological Opinions and jeopardy Opinions for Region 1 for FY 1991.

EVENTUAL OUTCOMES OF JEOPARDY OPINIONS

- 1987 ■ The seven proposals receiving jeopardy Opinions proceeded with reasonable and prudent alternatives, or were cancelled for reasons unrelated to the ESA.
- 1988 ■ The three proposals receiving jeopardy Opinions proceeded with reasonable and prudent alternatives, or were cancelled for reasons unrelated to the ESA.
- 1989 ■ The five proposals receiving jeopardy Opinions proceeded with reasonable and prudent alternatives, or were cancelled for reasons unrelated to the ESA.
- 1990 ■ The two proposals receiving jeopardy Opinions proceeded with reasonable and prudent alternatives, or were cancelled for reasons unrelated to the ESA.

1991 ■ Of the 62 proposals receiving jeopardy Opinions eight BLM timber sales were dropped because of Section 7, 44 BLM timber sales were referred to the ESA Exemption Committee, and ten proposals proceeded with reasonable and prudent alternatives or were cancelled for reasons unrelated to the ESA.

#### DISCUSSION

Over the five year period of this study, FWS issued 79 jeopardy Biological Opinions. Twenty-seven of these proposals proceeded with reasonable and prudent alternatives or were cancelled for reasons unrelated to the ESA. Forty-four BLM timber sales were referred to the ESA Exemption Committee, and eight BLM timber sales were dropped as a result of jeopardy Opinions under Section 7.

The eight Section 7 related dropped sales represent 2.25% of all formal consultations conducted by Region 1 for fiscal year 1991. If BLM'S request for an exemption for the additional 44 timber sales is ultimately denied by the ESA Exemption Committee, the average percentage of blocked projects to formal consultations for the five year period will rise to 7.47%. However, if consultation on BL'S fiscal year 1991 timber program had been conducted on a programmatic basis, as was the case for the Forest Service, then only one jeopardy Biological Opinion would have been issued for BLM sales in Oregon instead of 52 separate Opinions. This would have reduced the total of Region 1 jeopardy Opinions for fiscal year 1991 to 11, and would have reduced the percentage of blocked projects to formal consultation to 0.55%.

U.S. FISH AND WILDLIFE SERVICE  
SECTION 7 CONSULTATIONS, BY REGION

REGION 2

Fiscal Year	Informal	Formal	Jeopardy Opinions	Jeopardy/ Formal (%)	*Blocked Actions/ Formal (%)	
1987	1,072	14	2	14.29%	0.00%	(0)
1988	1,217	10	1	10.00%	0.00%	(0)
1989	1,487	17	2	11.76%	11.76%	(2)
1990	1,655	27	1	3.70%	0.00%	(0)
1991	2,339	42	2	4.76%	2.38%	(1)
<b>TOTALS</b>	<b>7,770</b>	<b>110</b>	<b>8</b>	<b>7.27%</b>	<b>2.73%</b>	<b>(3)</b>

• A "Blocked Action" is a proposal that received a jeopardy Opinion and was withdrawn or terminated because of Section 7 of the ESA.

EVENTUAL OUTCOMES OF JEOPARDY OPINIONS

- 1987 ■ Both proposals receiving jeopardy Opinions proceeded with reasonable and prudent alternatives.
- 1988 ■ The one proposal receiving a jeopardy Opinion proceeded with reasonable and prudent alternatives.
- 1989 ■ Both proposals were blocked: one due to a lack of reasonable and prudent alternatives, and the other due to an ESA related court order.
- 1990 ■ The one proposal resulting in jeopardy proceeded with reasonable and prudent alternatives.
- 1991 ■ Of the two proposals receiving jeopardy Opinions, one proceeded with reasonable and prudent alternatives, and the other was blocked due to the unavailability of reasonable and prudent alternatives.

DISCUSSION

Over the five year period of this study, FWS issued eight jeopardy Biological Opinions. Five of the eight projects proceeded with reasonable and prudent alternatives. Only three federal

actions were blocked as a result of Section 7. Two of these actions, one proposed by the Corps of Engineers in 1989 and the other by the Federal Highway Administration in 1991, did not go forward because no reasonable and prudent alternatives were available to mitigate the harm posed to listed species. The third action, the Forest Service's proposed comprehensive plan for the management of red-cockaded woodpecker habitat in national forests in Texas, was blocked in 1989 as a result of a court order.

**U.S. FISH AND WILDLIFE SERVICE  
SECTION 7 CONSULTATIONS, BY REGION**

**REGION 3**

<b>Fiscal Year</b>	<b>Informal</b>	<b>Formal</b>	<b>Jeopardy Opinions</b>	<b>Jeopardy/ Formal (%)</b>	<b>*Blocked Actions/ Formal (%)</b>	<b>(#)</b>
1987	1,374	2	0	0.00%	0.00%	(0)
1988	3,340	7	1	14.29%	0.00%	(0)
1989	5,088	2	0	0.00%	0.00%	(0)
1990	2,925	3	0	0.00%	0.00%	(0)
1991	2,695	4	2	50.00%	25.00%	(1)
<b>TOTALS</b>	<b>15,422</b>	<b>18</b>	<b>3</b>	<b>16.67%</b>	<b>5.56%</b>	<b>(1)</b>

\* A "Stocked Action" is a proposal that received a jeopardy Opinion and was withdrawn or terminated because of Section 7 of the ESA.

**EVENTUAL OUTCOMES OF JEOPARDY OPINIONS**

- 1987 ■ No jeopardy Opinions were rendered.
- 1988 ■ The one proposal receiving a jeopardy Opinion proceeded with reasonable and prudent alternatives.
- 1989 ■ No jeopardy Opinions were rendered.
- 1990 ■ No jeopardy Opinions were rendered.
- 1991 • Of the two proposals receiving jeopardy Opinions, one proceeded with reasonable and prudent alternatives, and the other was blocked as a result of state intervention forcing the applicant to consider alternatives □□□□ went beyond the reasonable and prudent alternatives suggested by FWS.

**DISCUSSION**

Between 1987 and 1991, FWS issued three jeopardy Biological Opinions. Two of these proposals proceeded with reasonable and prudent alternatives, and only one federal action was blocked due to Section 7. In that case, the Corps of Engineers requested consultation on a permit application for the construction of a barge loading facility in Prairie du Chien, Wisconsin. FWS issued



a jeopardy Opinion for the Higgins' eye pearly mussel that included reasonable and prudent alternatives. Before the Corps could issue the permit, litigation based on the harm posed to the mussel spurred the state of Wisconsin to intervene. The State forced the applicant to consider other alternatives, and the project was ultimately dropped for economic reasons.

**U.S. FISH AND WILDLIFE SERVICE**  
**SECTION 7 CONSULTATIONS, BY REGION**

**REGION 4**

Fiscal Year	Informal	Formal	Jeopardy Opinions	Jeopardy/ Formal (%)	*Blocked Actions/ Formal (%)	
1987	1,447	147	22	14.97%	0.00%	(0)
1988	1,874	183	15	8.20%	0.00%	(0)
1989	2,471	120	13	10.83%	0.00%	(0)
1990	3,514	151	15	9.93%	0.66%	(1)
1991	3,053	119	11	9.24%	0.84%	(1)
<b>TOTALS</b>	<b>12,359</b>	<b>720</b>	<b>76</b>	<b>10.56%</b>	<b>0.28%</b>	<b>(2)</b>

A "Blocked Action" is a proposal that received a jeopardy Opinion and was withdrawn or terminated because of Section 7 of the ESA.

**EVENTUAL OUTCOMES OF JEOPARDY OPINIONS**

- 1987 I Of the 22 jeopardy Opinions issued in 1987, 19 included reasonable and prudent alternatives. Eighteen of these actions proceeded with the suggested alternatives, or were cancelled for reasons unrelated to the ESA. Not enough information exists about the other action to determine its status. Reasonable and prudent alternatives were not available for three proposed federal actions, and these projects were deactivated pending further consideration, but were not withdrawn or terminated.
- 1988 ■ Of the 15 jeopardy Opinions issued, 12 contained reasonable and prudent alternatives. Eight of these proposals proceeded with the suggested alternatives, or were cancelled for non-ESA related concerns. Not enough information exists about three actions to determine their status, and discussions continue on the other action. Reasonable and prudent alternatives were not available for three proposals that have been deactivated pending further consideration, but were not withdrawn or terminated.
- 1989 ■ Of the 13 jeopardy Opinions issued, 12 included reasonable and prudent alternatives. Eleven of these proposals either proceeded with the suggested alternatives, or were cancelled

- for reasons unrelated to the ESA. Discussions continue on the other action. The one proposal for which a reasonable and prudent alternative was not available remains unresolved.
- 1990 ■ Of the 15 jeopardy Opinions issued, 10 included reasonable and prudent alternatives. Six of these proposed actions proceeded with the suggested alternatives, or were cancelled for reasons unrelated to the ESA. Discussions continue on the other four actions. Reasonable and prudent alternatives were not available for five proposals. Of these, one project is proceeding after issuance of a permit from the Corps of Engineers, three projects have been deactivated, but not withdrawn or terminated, and the Corps of Engineers denied a permit for one project based on Section 7.
- 1991 ■ Of the 11 jeopardy Opinions issued, three contained reasonable and prudent alternatives. One of the three has proceeded with the suggested alternatives, and discussions continue on the two most recent proposals. Reasonable and prudent alternatives were not available for eight proposals. Four of these actions have been deactivated, but not withdrawn or terminated. The outcome of one remains unresolved, two have proceeded without acceptable alternatives and are the subject of citizen suits, and the last was cancelled as a direct result of Section 7.

#### DISCUSSION

The FWS issued 76 jeopardy Biological Opinions between 1987 and 1991 for Region 4. Forty-five federal actions proceeded with reasonable and prudent alternatives, or were cancelled for reasons unrelated to the ESA. Not enough information exists about four actions to determine their status, eight projects are still under discussion, and fifteen remain unresolved or were deactivated, but were not withdrawn or terminated. Two projects have proceeded without reasonable and prudent alternatives and are the subject of citizen suits. Altogether, 74 projects have proceeded, were cancelled for reasons unrelated to the ESA, or are unresolved.

Since 1987, two federal proposals have been clearly blocked in Region 4 because of Section 7. Both of these actions involved the endangered manatee. In 1990, the Corps of Engineers requested consultation on a permit application for a proposed marina. The FWS issued a jeopardy Opinion based on the harm likely to result to the manatee due to the increase in boat traffic expected from the project. The Corps denied the permit based on the jeopardy Opinion and the proposed project was withdrawn. Similarly, in 1991 the Corps of Engineers denied a permit for a proposed project on the Jacksonville Naval Air Station because it imperiled the manatee.

Although only two proposals have been positively identified as being blocked for the five year period, it is possible that more will eventually be withdrawn. Between 1987 and 1991, the FWS issued 20 jeopardy Opinions without reasonable and prudent alternatives. Only one of these projects has proceeded without interference to date. Of

the fifty-six proposals containing reasonable and prudent alternatives, there is inadequate information regarding four of the proposals to determine their status, and eight are still under discussion. Thus, there are 32 remaining proposals either without reasonable and prudent alternatives or whose status under Section 7 remains unclear. If these additional 32 proposals are ultimately dropped or blocked, the number of blocked actions will rise from 2 (0.28% of all formal consultations) to 34 (4.72% of all formal consultations). Of course, these proposals may also eventually resolve their problems with endangered species and be completed.

U.S. FISH AND WILDLIFE SERVICE  
SECTION 7 CONSULTATIONS, BY REGION

REGION 5

Fiscal Year	Informal	Formal	Jeopardy Opinions	Jeopardy/ Formal (%)	*Blocked Actions/ Formal (%)	
1987	568	4	1	25.00%	25.00%	(1)
1988	991	2	0	0.00%	0.00%	(0)
1989	1,180	7	3	42.86%	0.00%	(0)
1990	1,328	3	0	0.00%	0.00%	(0)
1991	1,388	5	2	40.00%	0.00%	(0)
<b>TOTALS</b>	<b>5,455</b>	<b>21</b>	<b>6</b>	<b>28.57%</b>	<b>4.76%</b>	<b>(1)</b>

• A "Blocked Action" is a proposal that received a jeopardy Opinion and was withdrawn or terminated because of Section 7 of the ESA.

EVENTUAL OUTCOMES OF JEOPARDY OPINIONS

- 1987 ■ The use of the pesticide carbofuran was blocked due to the deaths of bald eagles in Virginia.
- 1988 ■ No jeopardy Opinions were rendered.
- 1989 ■ All three proposals receiving jeopardy Opinions proceeded with reasonable and prudent alternatives.
- 1990 ■ No jeopardy Opinions were rendered.
- 1991 ■ Of the two proposals receiving jeopardy Opinions, one proceeded with reasonable and prudent alternatives. The second, involving the construction of three piers on Cedar Island in Virginia, was issued with reasonable and prudent alternatives, but is so recent that the Corps of Engineers has not proceeded with any action. Two formal consultations are still pending.

DISCUSSION

Region 5 issued six jeopardy Biological Opinions between 1987 and 1991. Four of the affected projects proceeded with reasonable and prudent alternatives, and the fifth is so recent that no action has been taken. Only one proposal has been

positively identified as having been blocked because of Section 7.

In 1987, FWS requested that EPA reinitiate formal consultation on the pesticide carbofuran because of confirmed bald eagle deaths linked to the pesticide in Virginia in 1985 and 1986. The subsequent Opinion consolidated regional responses and found jeopardy not only to the bald eagle, but to the Aplomado falcon in Texas as well. In response, EPA and the pesticide's manufacturer agreed to phase out granular carbofuran over a three year period. In addition, nine states in Region 5 were identified as sensitive zones, so major uses of carbofuran were stopped in Region 5 on September 1, 1987.

U.S. FISH AND WILDLIFE SERVICE  
SECTION 7 CONSULTATIONS, BY REGION

REGION 6

Fiscal Year	Informal	Formal	Jeopardy Opinions	Jeopardy/ Formal (%)	*BlockedActions/ Formal (%)
1987	1,777	21	1	4.76%	0.00% (0)
1988	2,273	24	2	8.33%	4.17% (1)
1989	2,637	36	0	0.00%	0.00% (0)
1990	3,183	33	3	9.09%	3.03% (1)
1991	4,197	30	3	10.00%	3.33% (1)
<b>TOTALS</b>	<b>14,067</b>	<b>144</b>	<b>9</b>	<b>6.25%</b>	<b>2.08% (3)</b>

\* A "Blocked Action" is a proposal that received a jeopardy Opinion and was withdrawn or terminated because of Section 7 of the ESA.

EVENTUAL OUTCOMES OF JEOPARDY OPINIONS

- 1987 ■ The one proposal receiving a jeopardy Opinion proceeded with reasonable and prudent alternatives.
- 1988 ■ Of the two proposals receiving jeopardy Opinions, one proceeded with reasonable and prudent alternatives, and the other was blocked due to a court injunction.
- 1989 ■ No jeopardy Opinions were rendered.
- 1990 ■ Of the three proposals receiving jeopardy Opinions, two proceeded with reasonable and prudent alternatives, and the third was blocked due to a court injunction.
- 1991 ■ Of the three proposals receiving jeopardy Opinions, two proceeded with reasonable and prudent alternatives, and the third was dropped due to threatened litigation.

DISCUSSION

The FWS issued nine jeopardy opinions during the five year period. Six of the nine activities proceeded with reasonable and prudent alternatives. Three proposals were blocked.

Of the three actions blocked, two involved requests from

EPA for consultation regarding the aboveground use of the pesticide strychnine. Following the issuance of the first jeopardy Opinion in 1988, the Eighth Circuit Court of Appeals enjoined use of strychnine until such time as EPA completed consultation with FWS and developed a use regime that did not result in jeopardy to various species at risk, such as the jaguarundi, the ocelot, and the bald eagle. In 1990, EPA proposed using strychnine treated **eggs** in Montana to control rabid skunks. The FWS again issued a jeopardy Opinion, this time for the grizzly bear, the Northern Rocky Mountain gray wolf, and the black-footed ferret. The aboveground use of strychnine was again blocked as a result of the court injunction. The third action involved the Bureau of Indian Affairs 1991 prairie dog control program for the Cheyenne River and Rosebud Indian Reservations in South Dakota. The program was dropped as a result of threatened litigation based on the harm posed to the black-footed ferret.



**U.S. FISH AND WILDLIFE SERVICE  
SECTION 7 CONSULTATIONS. BY REGION**

**REGION 7**

<b>Fiscal Year</b>	<b>Informal</b>	<b>Formal</b>	<b>Jeopardy Opinions</b>	<b>Jeopardy/ Formal (%)</b>	<b>*Blocked Actions/ Formal (%)</b>
1987	95	4	0	0.00%	0.00% (0)
1988	74	4	0	0.00%	0.00% (0)
1989	94	6	0	0.00%	0.00% (0)
1990	68	1	0	0.00%	0.00% (0)
1991	116	2	0	0.00%	0.00% (0)
<b>TOTALS</b>	<b>447</b>	<b>17</b>	<b>0</b>	<b>0.00%</b>	<b>0.00% (0)</b>

\* A "Blocked Action" is a proposal that received a jeopardy opinion and was withdrawn or terminated because of Section 7 of the ESA.

**EVENTUAL OUTCOMES OF JEOPARDY OPINIONS**

- 1987 • No jeopardy Opinions were rendered.
- 1988 ■ No jeopardy Opinions were rendered.
- 1989 ■ No jeopardy Opinions were rendered.
- 1990 ■ No jeopardy Opinions were rendered.
- 1991 • No jeopardy Opinions were rendered.

**DISCUSSION**

No jeopardy Biological Opinions were issued in Region 7 between 1987 and 1991. No federal actions were blocked.

**U.S. FISH AND WILDLIFE SERVICE  
SECTION 7 CONSULTATIONS, BY REGION**

**REGION 9**

<b>Fiscal Year</b>	<b>Informal</b>	<b>Formal</b>	<b>Jeopardy Opinions</b>	<b>Jeopardy/ Formal (%)</b>	<b>*Blocked Actions/ Formal (%)</b>	
1987	0	40	0	0.00%	0.00%	(0)
1988	0	16	0	0.00%	0.00%	(0)
1989	0	187	**169	90.37%	0.00%	(0)
1990	0	16	0	0.00%	0.00%	(0)
1991	0	15	0	0.00%	0.00%	(0)
<b>TOTALS</b>	<b>0</b>	<b>274</b>	<b>169</b>	<b>61.68%</b>	<b>0.00%</b>	<b>(0)</b>

A "Blocked Action" is a proposal that received a jeopardy Opinion and was withdrawn or terminated because of Section 7 of the ESA.

\*\* In 1989, EPA requested consultation on its extensive pesticide registration program. FWS evaluated 113 chemicals for 169 uses or federal actions, and found that each action had the potential to jeopardize at least one listed species. All the chemicals were subsequently registered in accordance with the Service's suggested reasonable and prudent alternatives.

**EVENTUAL OUTCOMES OF JEOPARDY OPINIONS**

- 1987 ■ No jeopardy Opinions were rendered.
- 1988 ■ No jeopardy Opinions were rendered.
- 1989 ■ One hundred sixty-nine activities receiving jeopardy Opinions proceeded with reasonable and prudent alternatives.
- 1990 ■ No jeopardy Opinions were rendered.
- 1991 I No jeopardy Opinions were rendered.

**DISCUSSION**

During the five year period, the FWS issued 169 jeopardy Biological Opinions, all in 1989. All 169 proposed federal actions proceeded with reasonable and prudent alternatives. No projects were blocked.

As noted above, the EPA pesticide registration program

accounted for all 169 jeopardy Opinions issued for Region 9 between 1987 and 1991. Although Region 9 normally completes a fair number of formal consultations each year, it rarely issues jeopardy Opinions, as evidenced by a complete lack of jeopardy Opinions over the remainder of the five year period. Additionally, had the Biological Opinions been issued on a programmatic basis, rather than separately for each proposed use, Region 9 would have issued only one jeopardy Opinion from 19 formal consultations in 1989. This would have reduced the total number of jeopardy Opinions for the five year period to one, or 0.94% of 106 total formal consultations.

**NATIONAL MARINE FISHERIES SERVICE  
SECTION 7 CONSULTATIONS, BY REGION**

**ALL REGIONS**

<b>Fiscal Year</b>	<b>Informal</b>	<b>Formal</b>	<b>Jeopardy Opinions</b>	<b>Jeopardy/ Formal (%)</b>	<b>*BlockedActions/ Formal (%)</b>	
<b>1987</b>	<b>104</b>	<b>48</b>	<b>0</b>	<b>0.00%</b>	<b>0.00%</b>	<b>(0)</b>
<b>1988</b>	<b>144</b>	<b>53</b>	<b>0</b>	<b>0.00%</b>	<b>0.00%</b>	<b>(0)</b>
<b>1989</b>	<b>154</b>	<b>45</b>	<b>1</b>	<b>2.22%</b>	<b>0.00%</b>	<b>(0)</b>
<b>1990</b>	<b>177</b>	<b>56</b>	<b>0</b>	<b>0.00%</b>	<b>0.00%</b>	<b>(0)</b>
<b>1991</b>	<b>209</b>	<b>46</b>	<b>2</b>	<b>4.35%</b>	<b>2.17%</b>	<b>(1)</b>
<b>TOTALS</b>	<b>788</b>	<b>248</b>	<b>3</b>	<b>1.21%</b>	<b>0.40%</b>	<b>(1)</b>

\* A "Stocked Action" is a proposal that received a jeopardy Opinion and was withdrawn or terminated because of Section 7 of the ESA.

**EVENTUAL OUTCOMES OF JEOPARDY OPINIONS**

- 1987** ■ No jeopardy Opinions were rendered.
- 1988** ■ No jeopardy Opinions were rendered.
- 1989** ■ The one proposal receiving a jeopardy Opinion is on hold while studies on the effects of noise from oil and gas activities on the North Pacific right whale continue.
- 1990** ■ No jeopardy Opinions were rendered.
- 1991** ■ Of two proposals receiving jeopardy Opinions, one proceeded with reasonable and prudent alternatives, and the other was blocked due to the danger it posed to chinook salmon.

**DISCUSSION**

NMFS only issued three jeopardy Opinions throughout the United States for the five year period between 1987 and 1991. Of those three Opinions, the Corps of Engineers blocked one proposed activity because it imperiled winter-run chinook salmon. Of the remaining two proposals, one proceeded with reasonable and prudent alternatives, and the other is on hold while biological studies continue.

# APPENDIX C

## SUMMARY TABLES SECTION 7 CONSULTATIONS BY FISCAL YEAR

### FISCAL YEAR 1987

<u>REGION</u>	<u>INFO MAL</u>	<u>FORMAL</u>	<u>JEOPARDY OPINIONS</u>	<u>JEOPARDY/ FORMAT</u>	<u>*BLOCKED ACTIONS/ FORMAL</u>
I	1611	73	7	9.59%	0.00%
II	1072	14	2	<b>14.29%</b>	<b>0.00%</b>
<b>III</b>	<b>1374</b>	<b>2</b>	<b>0</b>	<b>0.00%</b>	<b>0.00%</b>
IV	1447	147	22	14.97%	0.00%
V	568	4	1	25.00%	25.00%
VI	1777	21	1	4.76%	0.00%
VII	95	4	0	0.00%	0.00%
DC	0	40	0	0.00%	0.00%
<b>TOTALS</b>	<b>7944</b>	<b>305</b>	<b>33</b>	<b>10.82%</b>	<b>0.33%</b>

• A "Blocked Action" is a proposal that received a jeopardy opinion and was withdrawn or terminated because of Section 7.

### FISCAL YEAR 1988

<u>REGION</u>	<u>INFORMAL</u>	<u>FORMAL</u>	<u>JEOPARDY OPINIONS</u>	<u>JEOPARDY/ FORMAL</u>	<u>*BLOCKED ACTIONS/ FORMAL</u>
I	2684	76	3	3.95%	0.00%
II	1217	10	1	10.00%	0.00%
III	3340	7	1	14.29%	0.00%
IV	1874	183	15	8.20%	0.00%
V	991	2	0	0.00%	0.00%
W	2273	24	2	8.33%	4.17%
VII	74	4	0	0.00%	0.00%
DC	0	16	0	0.00%	0.00%
<b>TOTALS</b>	<b>12453</b>	<b>322</b>	<b>22</b>	<b>6.83%</b>	<b>0.31%</b>

• A "Blocked Action" is a proposal that received a jeopardy opinion and was withdrawn or terminated because of Section 7.

### FISCAL YEAR 1989

<u>REGION</u>	<u>INFORMAL</u>	<u>FORMAL</u>	<u>JEOPARDY OPINIONS</u>	<u>JEOPARDY/ FORMAT</u>	<u>*BLOCKED ACTIONS/ FORMAL</u>
	<b>3455</b>	<b>71</b>	<b>5</b>	<b>7.04%</b>	<b>0.00%</b>
II	1487	17	2	11.76%	11.76%
III	5088	2	0	0.00%	0.00%
IV	2471	120	13	10.83%	0.00%
	1180	7	3	42.86%	0.00%
VI	2637	36	0	0.00%	0.00%
VII	94	6	0	0.00%	0.00%
IX	0	187	169	90.37%	0.00%
<b>TOTALS</b>	<b>16412</b>	<b>446</b>	<b>192</b>	<b>43.05%</b>	<b>0.45%</b>

• A "Blocked Action" is a proposal that received a jeopardy opinion and was withdrawn or terminated because of Section 7.

**SUMMARY TABLES**  
**SECTION 7 CONSULTATIONS BY FISCAL YEAR (con't.)**

**FISCAL YEAR 1990**

<u>REGION</u>	<u>INFORMAL</u>	<u>FORMAL</u>	<u>JEOPARDY OPINIONS</u>	<u>JEOPARDY/ FORMAL</u>	<u>*BLOCKED ACTIONS/ FORMAL</u>
I	3263	121	2	1.65%	0.00%
II	1655	27	1	3.70%	0.00%
III	2925	3	0	0.00%	0.00%
IV	3514	151	15	9.93%	0.66%
V	1328	3	0	0.00%	0.00%
VI	3183	33	3	9.09%	3.03%
VII	68	1	0	0.00%	0.00%
IX	0	16	0	0.00%	0.00%
<b>TOTALS</b>	<b>15936</b>	<b>355</b>	<b>21</b>	<b>5.92%</b>	<b>0.56%</b>

• A 'Blocked Action' is a proposal that received a jeopardy opinion and was withdrawn or terminated because of Section 7.

**FISCAL YEAR 1991**

<u>REGION</u>	<u>INF</u>	<u>MAI</u>	<u>FORMAL</u>	<u>JEOPARDY OPINIONS</u>	<u>JEOPARDY/ FORMAL</u>	<u>*BLOCKED ACTIONS/ FORMAL</u>
I	5027		355	62	17.46%	2.25%
II	2339		42	2	4.76%	2.38%
III	2695		4	2	50.00%	25.00%
IV	3053		119	11	9.24%	0.84%
V	1388		5	2	40.00%	0.00%
VI	4197		30	3	10.00%	3.33%
VII	116		2	0	0.00%	0.00%
IX	0		15	0	0.00%	0.00%
<b>TOTALS</b>	<b>18815</b>		<b>572</b>	<b>82</b>	<b>14.34%</b>	<b>2.10%</b>

• A "Blocked Action" is a proposal that received a jeopardy opinion and was withdrawn or terminated because of Section 7.

**GRAND TOTALS**

<u>REGION</u>	<u>INFORMAL</u>	<u>FORMAL</u>	<u>JEOPARDY OPINIONS</u>	<u>JEOPARDY/ FORMAL</u>	<u>*BLOCKED ACTIONS/ FORMAL</u>
I	16049	696	79	11.35%	0.00%
II	7770	110	8	7.27%	2.73%
III	15422	18	3	16.67%	5.56%
IV	12359	720	76	10.56%	0.28%
V	5455	21	6	28.57%	4.76%
VI	14067	144	9	6.25%	2.08%
VII	447	17	0	0.00%	0.00%
IX	0	274	169	61.68%	0.00%
<b>TOTALS</b>	<b>71560</b>	<b>2000</b>	<b>350</b>	<b>17.50%</b>	<b>0.90%</b>

• A 'Blocked Action' is a proposal that has received a jeopardy opinion and was withdrawn or terminated because of Section 7. There were a total of 18 confirmed blocked actions between 1987 and 1991.

NATIONAL MARINE FISHERIES SERVICE

<u>FISCAL YEAR</u>	<u>INEORMAL</u>	<u>FORMAL</u>	<u>JEOPARDY</u> <u>OPINIONS</u>	<u>JEOPARDY/</u> <u>FORMAL</u>	<u>* BLOCKED</u> <u>ACTIONS/</u> <u>FORMAL</u>
1987	104	48	0	0.00%	0.00%
1988	144	53	0	0.00%	0.00%
1989	154	45	1	2.22%	0.00%
1990	177	56	0	0.00%	0.00%
1991	209	46	2	4.35%	2.17%
<b>TOTALS</b>	<b>788</b>	<b>248</b>	<b>3</b>	<b>1.21%</b>	<b>0.40%</b>

• A "Blocked Action is a proposal that has received a jeopardy opinion and was withdrawn or terminated for ESA related concerns.