



Endangered Species Protection Program

Responding to Draft Biological
Opinions

Discussion with the
Pesticide Program Dialogue Committee
October 7, 2008



Today's Discussion

- ↪ Share steps undertaken relative to 1st NMFS Biological Opinion
- ↪ Describe “applicant” opportunities for participation
- ↪ Discuss public opportunities for participation

GENERAL TIMELINE FOR CONSULTATIONS

Action Agency determines proposed action may affect listed species or designated critical habitat and requests initiation of formal consultation

Information is complete

Consultation clock starts from date of receipt

Service formulates BO and Incidental take statement in conjunction with Agency/Applicant

90 Days
FORMAL
CONSULTATION

Review of draft BO by Agency and/or applicant

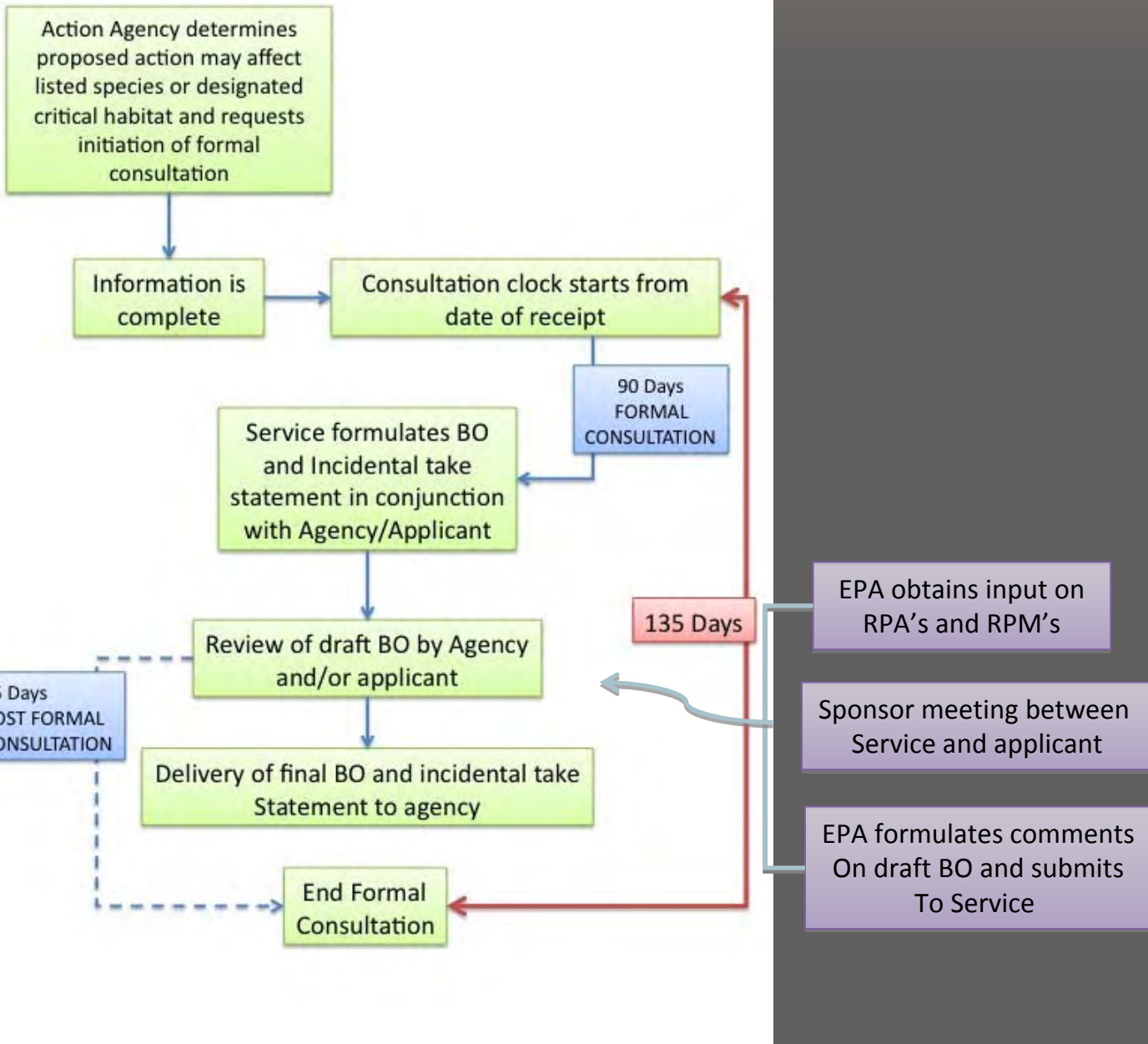
135
Days

45 Days
POST FORMAL
CONSULTATION

Delivery of final BO and incidental take Statement to agency

End Formal Consultation

General EPA Actions Relative to Draft Biological Opinions



Applicant Opportunities

- ↪ Service Consultation Handbook and Regulations identify specific opportunities for “applicants”
- Action agency provides opportunity to submit information for consideration during consultation
 - Entitled to review draft biological opinions obtained through the action agency and to provide comments through the action agency
 - The Services will discuss the basis of their biological determination with the applicant, seek the applicant’s expertise in identifying reasonable and prudent alternatives to the action if likely jeopardy or adverse modification of critical habitat is determined
 - Services provide the applicant with a copy of the final biological opinion



Public Opportunities

- ↪ No specific public opportunities provided by Services' consultation handbook or regulations
- ↪ Public opportunities provided by EPA include comment on draft RPA's or RPM's through web and docket posting of draft Biological Opinions

First NMFS

Biological Opinion

- ↪ Litigation (settlement) driven schedule
- ↪ Limited opportunity to discuss RPA's and RPM's with Agency and Applicants prior to Draft
- ↪ Extent of EPA's ability to provide opportunities for meaningful public input to RPA's and RPM's therefore limited
- ↪ EPA intends to continue to make public, Draft Biological Opinions received from NMFS for purposes of public input on any RPA's or RPM's contained in the Draft

Process for First Draft Biological Opinion

- ↪ EPA received Draft Biological Opinion on July 31, 2008
- ↪ Posted Draft Biological Opinion to our Web site and established a Public Docket
- ↪ Prepared and provided EPA comments on the Draft Biological Opinion
- ↪ Hosted two meetings and one call among EPA, NMFS and Applicants as provided for in ESA Section 7 regulations and Handbook
- ↪ Discussion being scheduled among EPA, NMFS and Applicants for mid October to further discuss basis for draft determination
- ↪ Final Biological Opinion due from NMFS by October 31, 2008
- ↪ While Docket established to gain input on RPA's or RPM's, that will need to be accomplished after a final Biological Opinion is issued in this instance

Questions EPA is grappling with in light of settlement

- ↪ If future timeframes under which EPA needs to respond to NMFS are similar for other litigation driven Biological Opinions
- What kind of public process should be structured for these biological opinions?
 - Should EPA continue to post Draft Biological Opinions to the public site even in the absence of RPA's or RPM's?
 - What can EPA do to ensure meaningful input to RPA's or RPM's if they are not available with the draft Biological Opinions?