

SAMPLE REQUEST FOR PARTICIPATION IN ESA § 7 CONSULTATION

Date

Via Certified Mail

Federal Agency
[Address]

Re: Participation in Endangered Species Act section 7 consultation process

Dear Sirs:

The purpose of this letter is to formally request that _____ be allowed to participate as an applicant or a non-federal representative with the _____ (name of federal agency) (“action agency”) and the _____ (either Fish and Wildlife Service or the National Marine Fisheries Service) during the Endangered Species Act (“ESA”) section 7 consultation process for _____ (name of project or decision). As part of that participation, I specifically request the following:

1. According to the section 7 consultation regulations, an applicant “refers to any person . . . who requires formal approval or authorization from a Federal agency as a prerequisite to conducting agency action.” 50 C.F.R. § 402.02. Since I require a permit from the Federal agency to proceed, I am an applicant in this process.
2. Once an applicant is defined, the regulations state that the section 7 consultation process is to be initiated by a conference between the federal agency and the FWS or NMFS. With regard to applicants, the regulations state that “applicants may be involved in these informal discussions to the greatest extent practicable.” 50 C.F.R. § 402.10(c). Once the conference is completed, the conclusions and recommendations of the FWS or the NMFS to the action agency are to be documented to the applicant. 50 C.F.R. § 402.10(e).
3. The section 7 regulations also allow applicant participation in the “early consultation” process. According to the regulations, “although early consultation is conducted between the Service and the Federal agency, the prospective applicant should be involved throughout the consultation process.” 50 C.F.R. § 402.11(a). In fact, the prospective applicant is allowed to initiate the early consultation process. 50 C.F.R. § 402.11(b).
4. According to the regulations, the Biological Assessment (“BA”) or Biological Evaluation (“BE”), the document created by the action agency containing the proposed action,

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may be prepared by a non-Federal representative. 50 C.F.R. § 402.12(a) to (c). Thus, I am interested in participating in the preparation of the BA.

5. Other evidence that the regulations require an applicant's participation in the process is in 50 C.F.R. § 402.13. According to that requirement, non-Federal representatives are to participate in the informal consultations process, during which time, the FWS or NMFS may "suggest modifications to the action that the Federal agency and any applicant could implement to avoid the likelihood of adverse effects. . . ." 50 C.F.R. § 402.13. Because of the need to complete this project, the I am very interested in alleviating any concerns and wish do discuss any "proposed modification" with you.

I appreciate the opportunity to work with you in this process. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,