

Appendix B. NE and NAA Template

- No Effect (NE) Analysis/Determinations for ESA Species and Critical Habitat
- Will Not Adversely Affect (NAA) Determination for Essential Fish Habitat

Use this form when analysis of a project shows that there are no effects to:

- ESA-listed species,
- Critical habitat of ESA-listed species and
- Essential fish habitat.

The Endangered Species Act (ESA) requires a determination be made of the effects, or impacts, to both the ESA-listed species and to their federally-designated critical habitat. Note that only some of the ESA-listed species have federally-designated critical habitats.

Essential fish habitat (EFH) is regulated under the Magnuson-Stevens Fishery Conservation Management Act and requires an assessment of impacts to EFH. This assessment is usually done in conjunction with the ESA impacts analysis. However, depending on where a project is located (i.e. Piper's Creek, Fauntleroy Creek), there may not be ESA listed species, but EFH species may be present and therefore, only an EFH consultation is required.

This SBE Appendix B provides an effects template for the effects determination for No Effect (NE) to ESA species and critical habitat, and Will Not Adversely Affect (NAA) determination for EFH. Use the SPIF Cover Page and not this template for determinations that are Not Likely to Adversely Affect (NLAA) or Likely to Adversely Affect (LAA) determination for ESA species and critical habitat and either Will Not Likely Adversely Affect (NLAA) or Will Likely Adversely Affect (LAA) determination for EFH.

Directions for Filling out the Templates:

Fill out the form by replacing the red *Italics* wording with project-specific information. The City of Seattle representative from the US Fish and Wildlife Service and National Oceanic and Atmospheric Administration (NOAA) Fisheries¹ can help with the template. In fact, the representative can take a lead in filling it out with the City of Seattle project manager. In such collaboration, the project manager should at least provide the project name, description and location information. After the form is completed, it should be packaged with the JARPA and submitted with the Joint Aquatic Resources Permit Application (JARPA) to the Corps of Engineers.

PROJECT NAME

Type in the actual and proper project name.

¹Under an Agreement between the City of Seattle, the US Fish and Wildlife Service and the National Oceanic and Atmospheric Administration (NOAA) Fisheries, Jim Muck (206-526-4740, Jim.Muck@NOAA.gov) provides ESA services to City of Seattle staff.

LOCATION

If this information is presented in the JARPA or other submitted documentation, it need not be repeated. Instead, please state where the project location information can be found.

PROJECT DESCRIPTION

If this information is presented in the JARPA or other submitted documentation, it need not be repeated. Instead, please state where the project description information can be found.

ALLOWABLE WORK WINDOW

Identify the work timing window for the water body in which work is being conducted. If the project is not complying with the work timing window, please give complete justification as to why it is not being followed.

ACTION AREA

Identify the action area for the project. The action area is defined by all areas to be affected directly or indirectly by the project and not merely the immediate area involved in the action. For example, if a project will work in a stream, the action area may be defined as the extent downstream of the project at which turbidity levels reach background levels.

CONSERVATION MEASURES (CMS)

Using this SBE, either list individual CMs or state which construction methods and their associated CMs will be used.

ESA SPECIES AND CRITICAL HABITAT: ANALYSIS AND DETERMINATION OF EFFECT

For each species and designated critical habitat in the project action area identified in Section II of the SPIF Cover Page, please provide a rationale, justification, or analysis of why the project will have No Effect on the listed species or critical habitat within the action area, not just the project area. Remember that a “No Effect” determination means “no effect. It does not mean a small effect or an effect that is unlikely to occur.

For species analysis, the following could be included in this analysis:

- Species is not located within the watershed*
- Fish barrier is some distance downstream (describe the barrier and the state the distance)*
- Project has no overland connection to a stream or other waterbody*
- Work is being conducted below the ordinary high water (OHW) or mean higher high water (MHHW) lines, but work is being conducted in the dry, such as at a low enough tide or when Lake Washington is drawn down.*
- Describe how any potential effects will be avoided (silt curtains, etc.)*

For critical habitat, a similar analysis is needed on how the project will not affect the primary constituent elements (PCEs) of the designated critical habitat. The bulleted items listed above may also be used for this analysis.

ESSENTIAL FISH HABITAT (EFH)

Please provide an analysis of the project as to why the project will not adversely affect EFH. EFH means those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. Adverse effect under EFH means any impact that reduces quality and/or quantity of EFH, and may include direct, indirect, site-specific or habitat-wide impacts, including individual, cumulative or synergistic consequences of actions. The bulleted items listed above may be used for this analysis. In addition, the following bullets could be addressed:

- Project will not impact the physical, chemical and biological properties of the water.*
- Project will not impact the sediment or substrate underlying the waters, and associated biological communities.*

Date

Name of Analysis Preparer