ENVIRONMENTAL PLANNING

CONSULTANT BIOLOGICAL PROCEDURES

Revision Date:
April 30, 2024

Published Date	Affected Sections	Description of Revision
April 2024	Title page	Updated to new ADOT logo, updated revision date, and added change log
April 2024	Table of Contents (and throughout document)	Updated footer to revision date
April 2024	Sections 3.1-3.6, 4.2, 6.1-6.5, 7.0, and 12.0	Updated broken links to referenced ADOT websites
April 2024	Section 3.5	Updated language for NGO coordination to specify EA & EIS projects
April 2024	Section 4.1	Updated Permits & Permissions section with ARS 17-495.01 language
April 2024	Section 6.3 & 6.5	Updated language to appropriate Navajo Nation procedures
April 2024	Section 9.1	Updated Lead Federal Agency section with new guidelines; also updated/deleted repetitive language

Table of Contents

1. BIOLOGY PROCESS OVERVIEW

1.1 EP Biology Coordination & Administration

ADOT Environmental Planning (EP) oversees biological compliance for ADOT's development program through the ADOT biologists. The ADOT biologists are responsible for reviewing all biology-related project deliverables and for certain types of agency coordination. All coordination and documentation related to biological resources should go through the applicable ADOT biologist identified in the ADOT Biological Reviewers Map (posted under Technical Guidance on the EP webpage).

It is also important for the ADOT National Environmental Policy Act (NEPA) planner assigned to the project to be informed of developments in the biological process. Consultants should copy the ADOT NEPA planner on emails related to biological submittals and coordination regarding potential issues that could impact the project scope, budget, or schedule.

1.2 Major Process Steps

The major biological compliance process steps for a typical project are provided below. Each step is discussed in more detail in subsequent sections of this guidance document.

Scope, Cost, & Schedule Estimate	Section 2
Initial Agency Coordination & Scoping	Section 3
Site Visits & Protocol Surveys (As Necessary)	Section 4
Geotechnical/Potholing Investigation Clearance (As Necessary)	Section 5
Report Preparation & Approval	Section 6
Agency Coordination/Consultation (As Applicable)	Section 7
Biology Approval & Environmental Clearance	Section 8
Mitigation Implementation (As Applicable)	Section 9
Consultant Qualifications	Section 10

1.3 Biological Resources/Issues Addressed

The ADOT biological process is intended to ensure project compliance with applicable federal, state, tribal, and other biological resource-related laws, regulations, orders, and policies. Biological resources/issues typically addressed through the ADOT biology process include, but are not necessarily limited to:

<u>Species or Habitat Protected by the Federal Endangered Species Act (ESA)</u>
The primary focus of the ADOT biology process is compliance with the federal ESA; therefore, the following ESA-protected species and habitats are the primary focus of ADOT biological documents:

- Species listed as threatened or endangered
- Species proposed for listing as threatened or endangered
- Designated or proposed critical habitat
- Experimental non-essential populations, i.e., "10j" populations

Species with candidate status (i.e., candidates for listing as threatened or endangered) receive no protection under the ESA, but often receive some protection through other agency special status as identified below. Candidate species are evaluated in ADOT biological documents but are treated as sensitive/other special status species.

Other Protected Species

- Eagles protected by the federal Bald and Golden Eagle Protection Act
- Birds protected by the federal Migratory Bird Treaty Act
- Native plants protected by the Arizona Native Plant Law
- Species subject to official Conservation Agreements

Agency-Specific Special Status Species

- Navajo Nation Endangered Species List (NESL) species (when on Navajo Nation land)
- Other tribal sensitive species (when on other tribal lands)
- US Forest Service (Forest) sensitive species (when on Forest lands)
- US Bureau of Land Management (BLM) sensitive species (when on BLM lands)
- Arizona Game and Fish Department (AGFD) Species of Greatest Conservation Need (SGCN)

Other Species, Resources, or Issues

- All bat species
- Wildlife connectivity/movement
- Invasive species

Further guidance on the actual evaluation and treatment of protected biological resources is provided in the separate report formats referenced in the Reports section of this document.

2. CONSULTANT SCOPE, COST, & SCHEDULE ESTIMATE

Once a task order/work request and project data sheet (PDS) is received from ADOT, the consultant prepares a cost estimate and schedule. During this phase the PDS will provide information for the consultant to understand the project scope of work and compliance approach, such as the need for a site visit or surveys, the type of report required, and whether Endangered Species Act Section 7 consultation may be warranted. If there are atypical situations or issues not covered in ADOT biology guidance documents, contact the ADOT biologist to discuss the compliance process prior to completing the scope, cost, and schedule estimate.

The PDS should provide the consultant sufficient information to anticipate the effort required for project biological clearance. However, because environmental compliance is a dynamic process, the biology scope of work may change as the project develops. If this requires adjustment to the consultant's cost estimate, coordination with the ADOT NEPA planner and EP contract administrator is necessary to determine the need for a task order/contract modification to account for changes in the consultant's scope of work.

2.1 Project Data Sheet (PDS)

The PDS will be completed by the ADOT Planner and technical specialists and included in the task order request sent to the consultant. The PDS should be used by the consultant as

a starting point to estimate the complexity of biology compliance efforts necessary for the project. When developing the cost estimate the consultant should use existing geospatial data, aerial imagery, the ADOT photo log, topographic maps, species lists, literature, and other readily available sources of information to identify protected biological resources potentially occurring in the project vicinity. The biology section of the PDS will include a recommended level of effort and the consultant is encouraged to review the PDS with the ADOT biologist prior to submittal.

2.2 Scope of Work & Cost Estimate

When preparing the scope of work & cost estimate, the consultant should clearly indicate the biological work that is anticipated to be required, including the need for a site visit or protocol surveys, the type of document to be prepared, and any agency coordination or Section 7 consultation that may be necessary. If a Biological Evaluation (BE) is expected to be required, identify the number and name of species anticipated to be evaluated in detail. For protocol surveys, the consultant scope of work should identify:

- Target species and protocol to be used
- Area(s) to be surveyed
- Number of survey visits over number of seasons
- Number of passes (for plants) or number of call points (for birds), etc.
- Number of staff that would perform the surveys
- Whether a separate survey report would be prepared or the results included in the overall biological report (as determined through coordination with the ADOT biologist)

Labor hours and expense requirements in the cost estimate should reflect the effort described in the scope of work.

2.3 Schedule

The EP cost estimate template includes a deliverable schedule for consultants to complete and submit with the scope & cost estimate. When completing this schedule, keep in mind that the biological clearance process generally needs to be completed at least 3 months prior to the actual project bid date. The biological clearance process is complete when all biological documents have been approved by the ADOT biologist and any external agency coordination or consultation has been completed, including Section 7 consultation (Refer to Section 8, Biology Approval & Environmental Clearance). The biology schedule must agree with any project schedule that has been set. If no project schedule has been set, coordinate with the consultant NEPA planner to develop a biology schedule that agrees with the overall clearance schedule. For general scheduling purposes, the following review timelines are applicable once the biological document has been submitted to the ADOT biologist:

- 10 days for ADOT biologist scoping letter review
- 30 days for ADOT biologist report review and approval
- 30 days for tribal or land managing agency report review and approval
- 45 days to complete informal Section 7 consultation/conference, or 165 days for formal Section 7 consultation/conference (these timeframes may be shortened

depending on the ADOT-USFWS liaison workload; however, the full review time should be used as a default in planning schedules).

These times do not run concurrently. See Sections 6 and 7 of this document (Reports and Section 7 Consultation/Conference, respectively) for more information.

The schedule should account for anticipated protocol surveys that are seasonal in nature or that must occur over multiple years. For example, some plant species surveys can only be conducted during spring of any given year. If a task order/work request is received in summer and spring-only plant surveys are anticipated, the consultant should acknowledge in the schedule that biology would not be complete until at least the following spring to allow time for the surveys to be completed and any document approvals or consultation requirements to be met.

If a conflict between the biology schedule and project schedule is identified during initial biology schedule development, or if at any time during the project a situation arises that may prevent biology from being complete on time, notify the ADOT biologist immediately.

3. INITIAL EXTERNAL AGENCY COORDINATION & SCOPING

Once the consultant's scope, cost, & schedule estimate is approved and the notice to proceed is issued, the next step is further data collection, which includes any necessary agency coordination as well as official project scoping.

3.1 External Agency Coordination General

Other than the US Fish and Wildlife Service (USFWS) and AGFD internet queries and scoping procedures described below, **do not contact any external agencies, including tribes, regarding ADOT projects without specific prior approval from the ADOT biologist**. The ADOT biologist will determine the appropriate contact (ADOT or consultant). Many agencies have provided data or recommendations to ADOT and do not want to be contacted repeatedly for the same request. Also, some agencies and tribes have requested direct ADOT contact for project related coordination. If the consultant is asked to contact an agency on ADOT's behalf, always follow up with an email summary of the conversation to the agency contact and the ADOT biologist.

Scoping letters for biology should be completed per the **Appendix to the Guidelines for Agency and Public Scoping for Projects with Categorical Exclusions** (**Scoping Guidelines**), available on the ADOT Environmental Planning CE Guidance webpage.

3.2 Arizona Game and Fish Department

Initial AGFD Online Review Tool Query

The ADOT Biologist will complete an AGFD online environmental review tool query for all projects that are not located on tribal lands. Results will be included as an attachment to the PDS.

Updating the AGFD On-line Review Tool Query (6 months)

AGFD online review tool receipts are valid for 6 months. Contact the ADOT biologist to determine whether a new review tool query is needed if the query receipt is greater than 6 months old at the following milestones:

- Approval of the biology document
- Submittal of the final CE (or other NEPA document)
- Environmental clearance to advertise the project for bid

AGFD Scoping Letter Responses

Any AGFD responses to scoping letters which include project specific questions or proposed mitigation will be sent to the ADOT biologist and the ADOT NEPA planner. The ADOT biologist and/or ADOT NEPA planner will determine the appropriate response to the letter. Concerns identified within the AGFD scoping letter are to be addressed in the biological report, typically in an Appendix (see the Biological Evaluation format). The on-line review tool receipt and the letter received from the AGFD during scoping will be submitted with the draft Biological Evaluation Short Form for placement in the project folder or attached to the Biological Evaluation report.

3.3 US Fish and Wildlife Service

The **USFWS Information, Planning, and Conservation** (IPaC) system is used to generate a species list for the project. An official IPaC report will be included as an attachment to the PDS.

If an official species list is obtained via IPaC, include the USFWS tracking number from the list on all correspondence to USFWS regarding the project, including scoping letters.

Updating the IPaC species list (90 days)

IPaC species lists are valid for 90 days. Contact the ADOT biologist to determine whether an updated IPaC species list is needed if the species list is greater than 90 days old at the following milestones:

- Approval of the biology document
- Submittal of the final CE (or other NEPA document)
- Environmental clearance to advertise the project for bid

3.4 Other External Agencies

ADOT highways across federal lands such as Forest or BLM lands or tribal lands such as the Navajo Nation are almost exclusively on easements. This means that ADOT does not actually own the land but has permission to maintain and operate the transportation system within the highway easement. When a project is located on any federal or tribal lands the level of biological documentation required and the list of applicable sensitive species to address will be obtained through the responses to the biology scoping letters (see the **Scoping Guidelines**). If a response to scoping is not received from the land managing agency, contact the ADOT biologist for further coordination with the agency.

3.5 Non-Governmental Organizations

Non-Governmental Organizations (NGOs) that may have biology-related concerns such as Sky Island Alliance, The Grand Canyon Trust, Center for Biological Diversity, and The Friends of SR 82 should only be sent scoping letters for complex projects (such as EIS or EA level projects) per the instructions in the **Scoping Guidelines**.

3.6 Invasive Species Coordination

Forward a copy of the project generic agency scoping letter and maps via email to the appropriate ADOT Natural Resources (NR) contact (see the **Invasive Species Contacts map** on the ADOT Environmental Planning Biology webpage) and copy the ADOT biologist. Allow the Invasive Species Contact 30 days to respond with any invasive species issues. See the section below on Noxious and Invasive Species Procedures.

4. GENERAL SITE VISITS & PROTOCOL SURVEYS

Once potential protected resource occurrence and agency concerns have been identified through the previous steps, the consultant should now know what to look for during any necessary field work as described below.

4.1 Permits & Permissions

Fieldwork such as site visits and surveys conducted on lands other than ADOT-owned right-of-way may require landowner permissions or notification, such as for tribal lands. Protocol surveys may require specific federal, state, tribal, or other permits. It is the consultant's responsibility to obtain the appropriate permits/permissions to complete protocol surveys; however, the ADOT biologist may need to assist with obtaining permission in certain situations, such as for tribal lands. According to the Arizona Game and Fish "Consent to the Release of Information Pursuant to A.R.S. 17-495.01 (2022)," information collected on private land pertaining to an endangered species or other species research or conservation plan is confidential and may not be shared. Confidential information about species shall be collected through a standardized property owner consent form provided by the ADOT biologist.

o

4.2 General Site Visits

The purpose of a general site visit is primarily to document existing biological conditions, determine whether suitable habitat for protected resources occurs in the project area and if noxious or invasive plant species are present (see link to list below). A site visit may not be necessary for urban projects or smaller projects that clearly have no impact on protected biological resources. If a site visit is warranted, information that should be collected or verified includes:

- Biotic community and dominant vegetation species
- General topography, geology, and soil information (as necessary to determine habitat suitability for certain species)
- Presence and location of suitable habitat for protected resources
- Presence and location of any semi-perennial or perennial watercourses
- Presence and location of any riparian or wetland habitat

- Representative photographs of the project area and notable features or observations, including but not limited to those described below

Although 100% pedestrian survey coverage is not necessary for a general site visit, the consultant should note the presence and location of any of the following observations:

- Any protected species
- Migratory bird nests
- Plant species protected by the Arizona native plant law
- Plant species included on the Arizona Department of Agriculture's most current list of *Prohibited, Regulated, and Restricted Noxious Weeds* and on the BLM Arizona state list or Forest list if on BLM or Forest easement. A list compiled from these sources is posted on the ADOT Roadside Development website.
- If the project requires any work on or near any structures such as bridges or culverts, check the structures for evidence of use by bats or nesting birds, e.g., bat guano or staining and bird nests or white wash.

4.3 Protocol Surveys

Protocol surveys target specific species. Any protocol surveys necessary should have been included in the consultant's scope of work and cost estimate that was approved by ADOT EP. Always notify the ADOT biologist prior to beginning protocol surveys.

In addition to information required by the survey protocol, the consultant should always collect the following information during surveys and include this information in reports or BEs submitted to ADOT (unless it is specifically not allowed by the protocol and/or permits):

- Geospatial data for survey limits, call points (for birds), and any target species found
- Representative photographs of the survey area
- Photographs of any target species found, including close-up photos of identifying characteristics as applicable
- If target species are detected, notify the ADOT biologist as soon as possible

The need for a separate survey report should have been established during the scope of work & cost estimate phase. See the Reports section of this document for further guidance regarding survey reports.

5. GEOTECHNICAL/POTHOLING INVESTIGATIONS

Some projects may require a geotechnical investigation to gather information on subsurface conditions or a potholing investigation to locate subsurface utilities. Geotechnical investigations typically involve taking discrete soil/rock samples using hand tools, drill rigs, augers, backhoes, or other excavation equipment. Potholing involves exposing underground utilities to visually confirm their location. This can be done with traditional excavation equipment but is now more commonly accomplished with large truck-mounted vacuums. These minor ground disturbing activities may occur early enough in the project development process to require separate environmental clearance prior to the overall project clearance.

5.1 When to Complete a Separate Biology Geotechnical/Potholing Evaluation (BESF or BE)

On some occasions, particularly for smaller projects where external agency coordination is not required, the scope of the geotechnical/potholing investigation can simply be included in the overall project biological document without the need for a separate geotechnical clearance. This is more likely when the overall project scope of work is known and there is enough time to obtain approval on the overall biological document before the geotechnical investigation is scheduled to begin. For larger, more complex projects that are in the early stages of design, a separate biology geotechnical/potholing evaluation may be necessary in order to allow the work to proceed prior to overall project clearance. If in doubt, coordinate with the ADOT biologist to determine if a separate geotechnical/potholing clearance is the best approach. Depending on location and extent, biological clearance for some geotechnical investigations may require protocol surveys, preparation of a BE, and even Section 7 consultation.

5.2 Biology Geotechnical Evaluation Format

Generally, the biology geotechnical evaluation will be completed using the BESF format described in the Reports section below. However, as discussed above, a BE may be required on some occasions.

6. REPORTS

Once initial agency coordination and field work has been completed, a report will be prepared that evaluates the potential impacts of the project to protected biological resources. Reports vary in content and complexity with project size, complexity, and potential to impact biological resources.

6.1 Report Formats

General descriptions of report formats are provided below. Specific format and content guidance are provided in the separate individual report format guidance documents posted on the ADOT Environmental Planning Biology technical guidance page. Most federal land management agencies and tribes accept the ADOT biological document formats. Other types of reports may be requested on occasion, such as a report of mitigation activities. Coordinate with the ADOT biologist regarding the format of any reports requested that are not listed below.

In-House Biological Memo

An in-house memo is written at the discretion of the ADOT biologist for projects with a limited scope of work, urban projects, or projects that occur within the limits of a recently cleared project.

Biological Evaluation Short Form (BESF)

For projects with a limited scope of work that have no potential to affect species or habitat protected by the ESA, a BESF is prepared. A BESF can typically be used for projects with the potential to impact other resources such as migratory birds or protected native plants. A BESF is also typically prepared for geotechnical/potholing investigations.

Biological Evaluation (BE)

A BE is required for projects where an explanation is needed, either in the species exclusion table or in a detailed evaluation of a species, to justify a "no effect" finding for ESA-protected species or habitat, to make a determination of effects, or where a "may affect" determination under Section 7 of the ESA is anticipated. A BE is always prepared for projects requiring analysis on the Navajo Nation (but see Section 6.3 regarding "No BE required" letters), and may also be prepared for other projects to evaluate other special status species as determined through coordination with the ADOT biologist.

Biological Re-evaluation

In some cases the biological clearance needs to be revisited for projects where biology is already complete. This can be due to time elapsed since a project has cleared, new species listings or critical habitat proposals or designations in the project area, or changes to the project scope of work that may result in impacts previously not considered. In most cases, the Biological Re-evaluation can be accomplished without the need for a formal report format by sending an email or memo to the ADOT biologist or drafting an update letter for submittal to USFWS. Discuss the appropriate format with the ADOT biologist.

Survey Report

A separate survey report is prepared for protocol surveys if requested by the ADOT biologist; otherwise, survey results and any data sheets or other information required by the protocol should be included in the project biological report.

6.2 Environmental Commitment Development & Coordination

For projects with the potential to impact protected resources, environmental commitments and conservation measures may be developed to avoid or minimize impacts, depending on the resource and likelihood of impact. It is the consultant's responsibility to identify situations where such commitments may be warranted and to relay that information to the ADOT biologist. It is also the consultant's responsibility to develop the environmental commitments or mitigation measures and ensure they are included verbatim in the project **Environmental Commitments** attached to the **Environmental Clearance** (both are available on the ADOT Environmental Planning CE Guidance webpage). Once project review is complete, the environmental planner sends these documents to the ADOT Contracts & Specifications Section, so that the Environmental Commitments can be incorporated into the special provisions in the construction contract for the project.

The **BE Guidance** document (available on the ADOT Environmental Planning Biology webpage) provides biology measures for situations frequently encountered on ADOT projects. These measures should be used preferentially for those situations. If the consultant anticipates that the project will require other environmental commitments not included in the **BE Guidance**, coordinate with the ADOT biologist prior to developing the commitments, as the ADOT biologist may be able to provide examples of preferred language for that specific situation.

Any environmental commitments proposed by the consultant, including measures from the **BE Guidance**, must be approved by the ADOT biologist prior to finalizing the biology document. Once the ADOT biologist has approved the environmental commitments, the ADOT biologist (or the consultant if requested by the ADOT biologist) will email the environmental commitments to the ADOT District contacts with a cc: to the ADOT project manager (PM) and ADOT NEPA planner. Written approval via email must be obtained from both the PM and the ADOT District prior to finalizing the environmental commitments in the biological document. All biology commitments must go through this approval process prior to biology document submittals to ***any*** external agencies. The ADOT NEPA planner should be copied on all emails related to commitment approval. The ADOT NEPA planner or ADOT biologist will coordinate with the ADOT PM regarding costs associated with biological commitments.

When biology documents require replanting as an environmental commitment, the consultant will notify the ADOT biologist as early as possible. The biologist will inform the ADOT NEPA planner, the Project Manager, Roadside Development, and the District to ensure a planting and associated watering plan is being developed. This coordination and associated plan must either be complete or near completion before the biology document is finalized.

If the environmental commitments include post-design measures (construction monitoring, generating reports, etc.) the ADOT biologist or ADOT NEPA planner will coordinate with the District and PM to develop a strategy for payment. Possible strategies include post-design services through the design consultant or including the commitment in the contractor responsibilities.

6.3 External Agency Considerations for Reports

As indicated in the Report Formats subsection above, most federal land management agencies and tribes accept ADOT biological document formats. General external agency and tribal considerations for reports are described below. Additional information is included in the separate **BE Guidance** and **BESF Instructions** (both are available on the ADOT Environmental Planning Biology technical guidance page).

At times it may be necessary during the report preparation phase to contact federal land management agencies or tribes for more specific information regarding resources to be evaluated. **The ADOT biologist will generally be the point of contact with external agencies or tribes. Consultants should not contact any external agencies or tribes regarding biological aspects of ADOT projects unless they have received specific prior approval from the ADOT biologist.**

Federal Land Managing agencies

Generally, federal land managing agency special status species are not evaluated in ADOT biological documents unless specifically requested by the agency during the initial agency coordination and scoping phase. If the agency has requested analysis of additional species, the separate **BE Guidance** and **BESF Instructions** provide direction on how to incorporate

federal land managing agency special status species and other concerns into ADOT biological reports.

On some occasions, federal land management agencies may request preparation of additional reports, such as Forest Management Indicator Species (MIS) or Migratory Bird Analysis (MBA) reports. Coordinate with the ADOT biologist if this occurs.

Navajo Nation

All ADOT projects will adhere to the most current version of the Navajo Nation Biological Resource Land Use Clearance Policies and Procedures (RCP) available on the Navajo Nation Department of Fish & Wildlife (NNDFW) website. The RCP divides the Navajo Nation into six types of wildlife areas based on biological resource values and establishes compliance requirements for projects occurring within each type of wildlife area. The RCP also identifies projects requiring a BE, depending on project type and location. **Under the RCP, a BE may not be required for many ADOT projects**. Always coordinate with the ADOT biologist to determine the format of biology documentation needed.

As mentioned in the Initial Agency Coordination & Scoping Section and detailed in the **Scoping Guidelines**, either a species data request or a "No BE required" letter must be completed for all projects occurring on Navajo Nation. All known species of concern included in the NNDFW species data response should be addressed in the ADOT biological document. See the separate **BE Guidance** and **BESF Instructions** for more specific guidance regarding treatment of those species and other concerns.

Other Tribes

Generally, other tribal special status species are not evaluated in ADOT project biological documents unless specifically requested by the tribe during the initial agency coordination and scoping phase. If the tribe has requested analysis of additional species, the separate **BE Guidance** and **BESF Instructions** provide direction on how to incorporate tribal special status species and other concerns into ADOT biological reports.

6.4 EP Submittal, Review, and Approval

When the draft biological document is due per the agreed date in the schedule, the consultant will submit the document to both the ADOT biologist and the ADOT NEPA planner for review. Electronic submittal via email is preferred. The consultant should include the following information in a separate transmittal email or memo for all biology document submittals:

- Brief history of any previous coordination
- ADOT NEPA planner
- Consultant NEPA planner
- Consultant biologist
- Environmental bid ready date (3 months prior to bid advertisement date)
- Project Manager
- Landowners
- 404 permit requirements

- Vegetation removal
- Preliminary effect determination(s)

The ADOT biologist will review the biology document with input from the ADOT NEPA planner and email comments to the consultant biologist with a cc: to the ADOT NEPA planner. Once the consultant has adequately addressed any comments, subsequent biology document submittals will be submitted to the ADOT biologist with a cc: to the ADOT NEPA planner. Once the final document is submitted to the ADOT biologist, the ADOT biologist will approve it by sending an email to the consultant and ADOT NEPA planner with the approved document attached. The document will include a digital "Approved" stamp and associated ADOT biologist digital signature.

As described in the Mitigation Development & Coordination Sub-section, once the ADOT biologist has approved the environmental commitments, the ADOT biologist (or the consultant if requested by the ADOT biologist) will email the environmental commitments to the ADOT District contacts with a cc: to the ADOT project manager (PM) and ADOT NEPA planner. Written approval via email must be obtained from both the PM and the ADOT District prior to finalizing the environmental commitments in the biological document. All biology commitments must go through this approval process prior to biology document submittals to ***any*** external agencies. The ADOT NEPA planner should be copied on all emails related to commitment approval. The ADOT NEPA planner or ADOT biologist will coordinate with the ADOT PM regarding costs associated with biological commitments.

Biology Document Submittals for Local Government Projects

All biology documents for local government projects should be submitted to the ADOT biologist with a cc: to the ADOT Local Government NEPA Planner. After review, the ADOT biologist will send comments back to the ADOT Local Government NEPA Planner, who will forward them to the appropriate local government or consultant as applicable.

6.5 External Agency Submittal, Review, and Approval

For projects located on federal or tribal land, the biology document must be sent to the federal land managing agency or tribe once the ADOT biologist has approved it. Generally, biology documents are sent as a courtesy copy for the recipient's files only, unless the agency or tribe has requested formal review or as otherwise indicated below for the Navajo Nation. Submittal of documents to USFWS as part of a technical assistance request or Section 7 consultation is addressed in the separate Section 7 Consultation section below.

Federal Land Managing Agencies

When a biological document must be submitted to a federal land managing agency, the consultant will coordinate with the ADOT biologist to determine if a transmittal letter is necessary. When a transmittal letter is required, the consultant will draft the letter on current ADOT letterhead for the ADOT biologist to review and sign. See the separate **example transmittal letters to external agencies** (available on the ADOT Environmental Planning Biology technical guidance page).

Once the ADOT biologist has approved and signed the letter, the ADOT biologist (or the consultant as approved by the ADOT biologist) will send the transmittal letter and approved biological document to the agency or tribe either via email or standard mail as determined by the ADOT biologist. If no response is received by the requested response date, ADOT generally considers coordination with the agency complete. The consultant should notify the ADOT biologist if the response period ends without a response, as the ADOT biologist may make additional contact attempts if no response is received.

At times, federal land management agencies may request more information or have comments, even if the biology document was sent as a file copy only. If this occurs, coordinate with the ADOT biologist on how to respond.

Navajo Nation

For all projects where a BE is required per the Navajo Nation RCP, the biological document will be sent to the NNDFW Environmental Reviewer for review along with the appropriate NNDFW data request form. The data request form should be obtained at the start of the project scoping process. To accomplish this, the consultant will draft a transmittal letter on current ADOT letterhead for the ADOT biologist to review and sign. See the example transmittal letter in the Appendix to the **Scoping Guidelines**. Once the ADOT biologist has approved and signed the letter, the ADOT biologist (or the consultant as approved by the ADOT biologist) will send the transmittal letter and data request form to the NNDFW Environmental Reviewervia email. If no response is received by the requested response date, the ADOT biologist will make additional contact attempts to obtain a Biological Resources Compliance Form (BRCF).

If the project is exempt from preparation of a BE per the Navajo Nation RCP, the consultant will prepare a “No BE required” letter to the NNDFW Environmental Reviewer as specified in the Appendix to the **Scoping Guidelines**. Once the ADOT biologist has approved and signed the letter, the ADOT biologist (or the consultant as approved by the ADOT biologist) will send the notification letter to the NNDFW Environmental Reviewer. NNDFW will respond with a BRCF for the project.

Other Tribes

When a biology document is sent to a tribe other than the Navajo Nation, the consultant will follow the transmittal letter procedure for federal land management agencies above. See the separate example transmittal letters to external agencies. If no response is received by the requested response date, ADOT generally considers coordination with the tribe complete. However, the ADOT biologist may make additional contact attempts if no response is received. At times, tribes may request more information or have comments, even if the biology document was sent as a file copy only. If this occurs, coordinate with the ADOT biologist.

7. NOXIOUS OR INVASIVE SPECIES PROCEDURE

1. ADOT Roadside Development maintains a compiled list of noxious and invasive species for the state of Arizona. It is posted here:

https://apps.azdot.gov/files/roadway-engineering/roadside-dev/adot-invasive-and-noxious-plant-species-list-for-seeds.pdf

2. During project development, determine whether invasive or noxious species are present in the project site. This may be done through one or a combination of the following:
    a. Biologist site visit and observation
    b. For projects on the state highway system, send a copy of the scoping letter to the maintenance invasive species contact for the appropriate district to ask if there are noxious or invasive species in the project area. Map of contacts is posted on the ENV biology webpage and roadside resources webpage.
3. If noxious or invasive species are documented to be present in the project area, include the commitment for Roadside Development to include special provisions for a Noxious Species Control Plan (NSCP) in the project contract. There are exceptions in the following cases:
    a. The NSCP special provision will not be added to projects where all work remains on the paved surface or moves quickly, such as milling, rumble strip installation or sign installation, unless the work requires staging or moving vehicles through an area with noxious or invasive weeds.
    b. For projects not bid and administered by ADOT where noxious or invasive species are present, the agency administering the project must address treatment of noxious or invasive species either before the project or as part of the contract.
4. If there are noxious or invasive species and threatened or endangered species present in the project area, inform the ADOT Biologist. The ADOT Biologist will coordinate to ensure that analysis of herbicide use is included in the Biological Evaluation (the information may be developed in-house and provided to the consultant). If the project is located on federal or tribal land, the ADOT Biologist will also coordinate development of an example Pesticide Use Proposal.

8. BALD AND GOLDEN EAGLE PROTECTION ACT

1. Analysis for protection of bald and golden eagles is documented in the BE in Appendix B, Section II or the BESF Section 10 – Additional Text.
2. If the Arizona Game and Fish Online Project Review Tool identifies observations of eagles within 3 miles of the project action area:
    a. If the project is within range and suitable habitat for bald or golden eagles but will not disturb or result in an incidental take, provide analysis and coordinate any proposed conservation measures with the ADOT biologist. Include a statement that the project will comply with the BGEPA. This may be documented in either the BE or BESF.
    b. If the project may disturb or result in the take of eagles, coordinate with the ADOT biologist and provide an analysis in the Biological Evaluation or the BESF). If the project will result in the incidental taking of bald or golden eagles, discuss with the ADOT biologist. It is preferable to modify the project to avoid take if possible. If take cannot be avoided, the analysis must include an assessment of impacts as outlined in the non-purposeful take permit. Detail all coordination with AGFD and USFWS in the analysis.

9. SECTION 7 CONSULTATION/CONFERENCE

If there is a determination that the project may affect ESA-protected species or habitat, the biology document will be submitted to the USFWS as part of the Section 7 consultation or conference process as applicable. The consultant will notify the ADOT biologist as soon as possible during the biology process if any "may affect" determinations are anticipated. **The ADOT biologist is the point of contact with USFWS for Section 7 coordination in most cases, as discussed in Section 9.1. The consultant will not contact USFWS without specific prior approval from the ADOT biologist.**

9.1 Lead Federal Agency

Section 7 consultation or conference is carried out between the action's lead federal agency and USFWS. For most ADOT projects funded by the Federal Highway Administration (FHWA), ADOT has been delegated responsibility for Section 7 consultation pursuant to 23 U.S.C. 326 and a Memorandum of Understanding dated December 20, 2023, and executed by FHWA and ADOT. This typically also includes FHWA-funded projects occurring on another federal agency's land or on tribal lands, and projects involving other federal permits, such as a Clean Water Act Section 404 permit. FHWA may be the lead federal agency for certain projects reviewed using non-listed CEs, Environmental Assessments and Environmental Impact Statements – see the PDS or discuss with ADOT biologist if there is a question. However, other agencies that may have a federal nexus for a decision related to the project should be made aware of the need for Section 7 consultation/conference, and should be invited to any meetings with USFWS, as well as copied on formal correspondence with USFWS, such as consultation initiation letters.

For projects where FHWA is the lead agency, FHWA maydesignate ADOT as FHWA's non-federal representative for the purposes of informal Section 7 consultation. For projects with a lead federal agency other than FHWA, the lead agency may also allow ADOT to act as non-federal representative. The ADOT biologist is responsible for coordinating with the lead federal agency to determine the appropriate procedures. The ADOT biologist will also coordinate with the federal lead agency to determine whether they will attend meetings. In addition, the ADOT NEPA planner, ADOT District, and Project Manager will be asked to attend any meetings as necessary.

If the project is not FHWA-funded, coordinate with the ADOT biologist to identify any federal nexus and determine the lead federal agency. If it is determined there is no federal nexus, the project will need to avoid take of listed species or may need to follow the ESA Section 10 process for impacts to ESA-protected species. Coordinate with the ADOT biologist if this is the case.

9.2 Effect Determination Implications

The Section 7 process followed will depend on the effect determinations made in the biological report for ESA-protected species or habitat as described below. See the separate **BE Guidance** document for additional guidance on effect determinations. Determinations included in biological reports are initially considered as recommendations by ADOT. The

ADOT biologist reviews these determinations and if the consultant and ADOT biologist disagree on a potential effect, the ADOT biologist will make the final determination in consultation with the lead federal agency, as appropriate.

No consultation/conference

If only "no effect" determinations are made for ESA-protected species or habitat, the reasoning will be documented in the BE. No Section 7 consultation/conference or other USFWS review or approval is required.

USFWS consultation/conference required

If a "may affect, is not likely to adversely affect"(NLAA) determination or a "may affect, is likely to adversely affect" (LAA) determination is made for any listed species, proposed species, designated critical habitat, or proposed critical habitat, see the **BE Guidance** document for details on developing the BE and associated correspondence. For proposed species, generally a BE should be prepared for any type of potential effect determination (either NLAA or LAA).

9.3 Submittals to ADOT Environmental Planning

The consultant will submit the items below to the ADOT biologist via email (unless requested as a hard copy).

- A Word version of the draft Section 7 consultation/conference initiation letter
- Both a PDF version and a Word version of the approved biological report

The ADOT biologist will coordinate transmittal of the BE to USFWS.

9.4 Consultation/Conference Results

Informal Consultation/Conference

Review the USFWS response letter and coordinate with the ADOT biologist if USFWS did not concur with any of the determinations. Also review the letter for any conservation measures that are inconsistent with the environmental commitments included in the approved biological report. The ADOT biologist (or the consultant if requested by the ADOT biologist) will notify the ADOT NEPA planner of any inconsistencies to determine whether the conservation measures can be accommodated. Additional coordination between the ADOT biologist and USFWS may be necessary. Once the conservation measures are finalized, the consultant will incorporate the measures into the **Environmental Commitments** which will be attached to the project **Environmental Clearance**.

Formal Consultation/Conference

Review the draft Biological Opinion (BO) from USFWS for wording in the action description, Reasonable and Prudent Measures and Terms and Conditions that are inconsistent with the environmental commitments included in the approved biological report. The ADOT biologist (or the consultant if requested by the ADOT biologist) will notify the ADOT NEPA planner of any inconsistencies. Additional coordination between the ADOT biologistand USFWS may be necessary.

Once the final BO is issued, the ADOT biologist (or the consultant if requested by the ADOT biologist) will notify the ADOT PM and DEC of any changes to the measures from the draft BO. The consultant will incorporate the finalized measures into the **Environmental Commitments** which will be attached to the project **Environmental Clearance**.

9.5 Technical Assistance

If there is a question regarding a potential effect determination or other items such as environmental commitments or the need for surveys, coordinate with the ADOT biologist. If necessary, the ADOT biologist will contact USFWS. This coordination may be considered technical assistance and not official Section 7 consultation/conference, depending on the outcome. At times, a draft biology document or other information may be submitted to USFWS by the ADOT biologist as part of technical assistance.

10. BIOLOGY APPROVAL & CLEARANCE DOCUMENT

The ADOT biological compliance process is complete for a project once the ADOT biologist has approved the biological document, any necessary coordination with external agencies on the biological document is complete, and any necessary Section 7 consultation/conference is complete. If no external agency coordination or Section 7 consultation is required, the biology process is complete once the ADOT biologist approves the biological document.

The ADOT biologist reviews the overall project clearance document and memo to ensure the biological resources are adequately addressed and the biological environmental commitments are included.

11. ENVIRONMENTAL COMMITMENT IMPLEMENTATION

Once a project is cleared to go to bid, any post-clearance environmental commitments must be implemented. Common environmental commitments include avoidance areas, pre-construction surveys, monitoring, and implementing contractor awareness training programs. The ADOT District and/or the contractor are responsible for implementing some commitments, such as avoiding certain areas. However, other commitments such as pre-construction species surveys and awareness training programs must be implemented by an EP-approved biologist per the Consultant Qualifications section below. A biologist may also need to attend the pre-construction meeting or other meetings with District and/or contractor personnel to answer any questions regarding the environmental commitments.

ADOT will determine who will implement biological commitments requiring a biologist. Depending on the type of commitment, permitting requirements, project funding, and other considerations, measures requiring a biologist may be implemented by:

- The consultant biologist involved with clearing the project,
- Another ADOT consultant biologist,
- An ADOT biologist,
- A biologist hired or sub-contracted by the construction contractor, and/or
- Arizona Game and Fish Department (though an existing agreement with ADOT)

The consultant should consider potential schedule impacts resulting from commitment implementation and notify the ADOT biologist as necessary. For example, if it is determined that pre-construction surveys are necessary and the consultant cannot obtain the proper permits in time, the ADOT biologist should be notified so that other arrangements can be made. As another example, if a commitment requires the construction contractor to remove all inactive bird nests from structures prior to February 1, but the construction contract will not be in place until after February 1, the ADOT biologist should be notified so that an alternative approach can be developed, such as ADOT District personnel or an Environmental Planning on-call consultant removing the inactive nests prior to February 1.

12. CONSULTANT QUALIFICATIONS

A summary of required **Qualifications for Biologists** to work on ADOT projects is posted on the ADOT Environmental Planning Biology technical guidance page. All consultants working on biological resource components for ADOT development, maintenance, or construction projects must meet these requirements, including biologists hired or sub-contracted by construction contractors to implement mitigation measures requiring a biologist. Typically, environmental commitments requiring a biologist will indicate that the biologist's resume will need to be sent to Environmental Planning for approval prior to commencing the work. All EP on-call consultants are required to provide a resume to the ADOT Biology Team Lead for approval prior to working on ADOT projects.