

responsibility of the action agency to ensure that all actions brought to the Level 1 team for consultation comply with management plans and programmatic consultations. **The key compliance issue for the Level 1 team is the extent to which the potential project's noncompliance with the Land use plan (and previous section 7 consultation) may affect the species under consultation.** If the Level 1 team determines that although an action is not consistent with some aspect of the existing land management plan, the inconsistency does not affect species under consideration, streamlining can move forward. If the potential noncompliance does not directly affect the regulatory agencies' ability to complete consultation, the noncompliance issue should be noted and elevated to Level 2 for their information. Differences in compliance interpretation for a few actions should not disrupt consultation on a majority of actions clearly consistent with the relevant plan or previous BO.

6. *What does the action agency do if the Level 1 team decides that they cannot concur with the preliminary effects determination for an action?*

In this event, the action agency may:

- Provide additional information in support of their determination.
- Accept the consensus opinion of effects of the Level 1 team.
- Modify the action with the assistance of the Level 1 team and approval of respective deciding officials or Level 2 team members.

G. *Elevation of Issues*

1. *What is the process for elevating issues for resolution from Level 1 teams?*

Issues should be elevated to Level 2:

- When differences in interpretation prevent Level 1 members from reaching a workable consensus.
- To clarify policy and direction.
- If substantial progress toward resolution of the issue(s) is not forthcoming.

There should be no stigma attached to elevation to Level 2. **Such elevation should not be considered a "failure,"** but rather a sign that the system is working to identify problems of conflicting policy or interpretation of standards. The intent of elevating issues is to avoid surprises or unnecessary delays. Elevation of an issue should not prevent the team from working on consultation or other actions independent of that issue.

Level 1 and 2 teams have flexibility to further refine the elevation process by developing a particular team's operating guidelines; these should be documented. Elevation can be accomplished by a short letter signed by members of the Level 1 team. Appendices 5a and 5b provide an example of an optional outline for written elevation documents for use by the Level 1 and Level 2 teams. The letter will simply state the disagreement or concern about an issue and that the issue needs to be elevated. This elevation letter need not describe the issue in detail or necessarily discuss solutions. However, this elevation letter will be accompanied by a succinct position statement written by the Level 1 member(s) who is/are elevating the issue. The letter should clarify why consensus cannot be reached by the Level 1 team. If appropriate, these statements may include suggested remedies to the situation offered by respective Level 1 team

members. This information will better enable the Level 2 team--or Regional Executives if necessary--to make an informed decision.

The Level 2 team should meet or hold a conference as soon as possible, typically within two weeks of receipt of the letter. The goal of the meeting should be to: review the issue, determine a course of action (e.g., hold joint Level 1 and 2 discussions or identify other agency personnel that should be involved), and identify a timeframe for reaching a Level 2 decision. The elevation to Level 2 should result in one of the following: either resolution of the issue and guidance to the Level 1 team or elevation to the Regional Executives (see below). Level 2 resolution may result in dropping, modifying, or continuing with the originally designed action

The outcome should be documented in a letter to the Level 1 team.

If a Level 2 member has an unresolved issue with a particular consultation, the issue should be elevated to all members of the Level 2. The Level 2 team should make every attempt to resolve the issue, prior to considering further elevation (see Question 2 in Section II.G).

2. *What is the process for elevating issues from the Level 2 teams?*

Level 2 teams should strive to reach resolution of an issue. If resolution is not reached, a Level 2 team or member will elevate the issue to the Regional Executives with a simple letter notifying them of an issue and need for resolution. Appendix 5c provides an example of an optional outline for the written elevation document for the Level 2 teams to the Executives. The Executives may designate staff (such as the RCTT) to assist in resolution. The elevation document should include the Level 1 position statements, as well as other material the Level 2 team provides.

The Regional Executives or designees will then make an interagency decision and instruct the Level 1 and 2 teams how to proceed on the issue. When resolved, the action will be routed back to the Level 1 and 2 teams for further processing. The outcome of elevated issues will be documented by a RCTT member, who will include this information, when appropriate, in reporting form summaries distributed to BLM, FS, and FWS, on an annual basis or as needed.

H. *Role of Applicants*

1. *Who is an applicant under ESA? What are the responsibilities of the agencies and Level 1 team to an applicant?*

Under 50 CFR § 402.02, an applicant is defined as any person who requires formal approval or authorization from a Federal agency as a prerequisite to conducting an action. Applicants would include those seeking permits, licenses, leases, letters of authorization, and any other form of authorization or approval issued by a Federal agency as a prerequisite for carrying out the action.

Applicants can be involved in the consultation process by:

- Submitting written information for consideration during the consultation.
- Reviewing and providing written comments on draft BOs.
- Discussing potential reasonable and prudent alternatives with the action and regulatory agencies.