

# Biological Evaluations

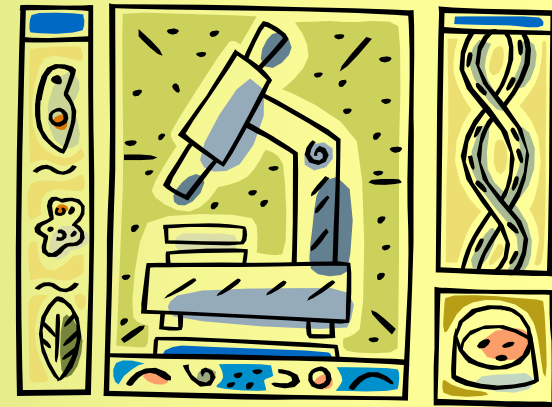


# Background



- Federal environmental laws
- Development of Tribal laws

# What is a BE?



- **A Study**
  - Impacts
  - Biological Resources
    - Threatened and Endangered (T&E) Species
    - Navajo Endangered Species (NESL)
    - Other protected species (e.g., MBTA)
    - Other resources significantly impacted (e.g., culturally significant plants & game animals)
  - Avoidance/Mitigation



# Why prepare a BE?



- Common sense
- The law
  - Navajo Nation Environmental Policy Act
    - (NNC Title 2, Chapter 9)
  - 17 NNC §507
  - 2 NNC §164
  - National Environmental Policy Act
  - Endangered Species Act





# Common Sense



“The first rule of intelligent tinkering is keeping all the parts”

– Aldo Leopold, Conservationist



“Continue to contaminate your bed and you will one night suffocate in your own waste.”


– Chief Sealth, Duwamish Tribe






# Navajo Environmental Policy Act

 Navajo Nation Code, Title 2, Chapter 9

 “It is the policy of the Navajo Nation to promote harmony and balance between the natural environment and people of the Navajo Nation...”

 “All agencies, departments, enterprises...of the Navajo Nation shall consider carefully in decision-making...any adverse environmental impacts...the extent to which...impacts may be reduced...and other alternatives...”



# National Environmental Policy Act (NEPA) 42 U.S.C. §§ 4321-4347

- NEPA is the basic national charter for protection of environment that is designed to avoid or minimize adverse environmental effects
- Requires environmental review for all major Federal actions
- Reviews are documented in
  - Environmental Assessments (EAs)
  - or more detailed Environmental Impact Statements (EISs)
- EAs are prepared to document whether an EIS is necessary
- EAs and EISs are prepared to inform agency decision makers
- NEPA impact analyses involve predicting the effects of agency actions on biological, physical, and socio-cultural resources – the human environment
- A commitment to mitigate adverse impacts is often included in the agency's decision



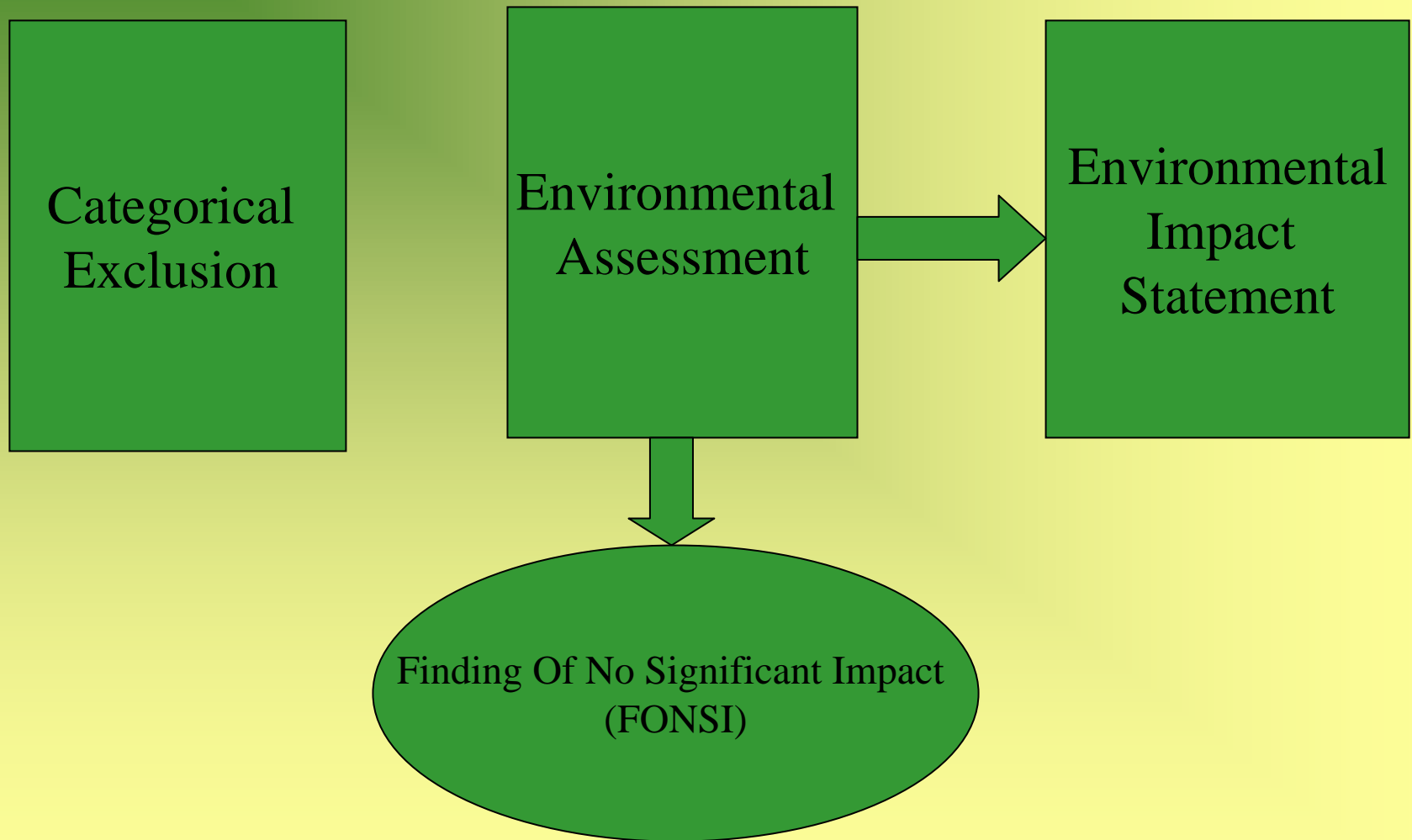
# NEPA Environmental Concerns

- Wetlands
- Riparian Areas
- Wild & Scenic Rivers
- Special Aquatic Sites
- Stream Channel Modification
- Threatened & Endangered Species
- Landscape Resource (Scenic Beauty)
- Natural Areas
- Migratory Bird Protection

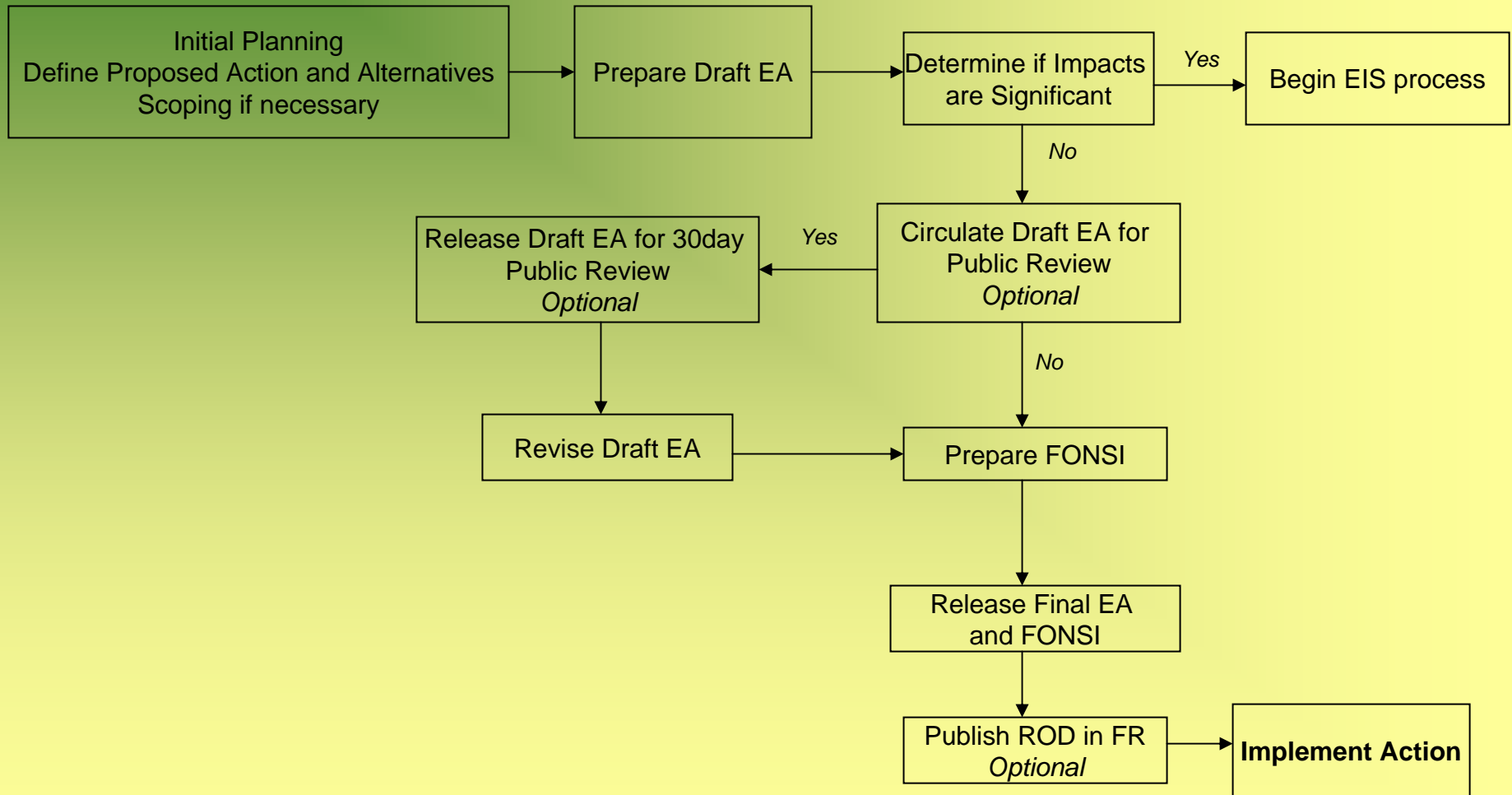




# Types of NEPA Analysis



# Environmental Assessment (EA) Process





# The Endangered Species Act

## Table of Contents

- Section 2: Findings & Purposes
- Section 3: Definitions
- Section 4: Listing, Critical Habitat Designation, Recovery, Monitoring
- Section 5: Land Acquisition
- Section 6: Cooperation with States
- Section 7: The Role of Federal Agencies
- Section 8: International Cooperation
- Section 9: Unlawful Activities**
- Section 10: Exceptions, including Permits
- Section 11: Penalties and Enforcement
- Etc.



# Section 7 Interagency Cooperation

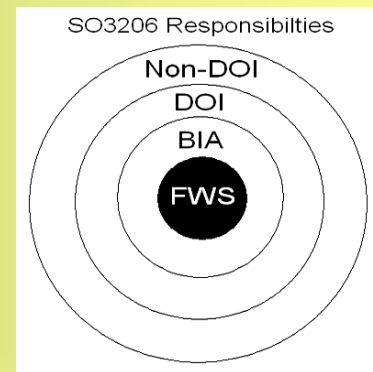
7(a)(2) Actions an agency **authorizes, funds, or carries out** cannot jeopardize the existence of listed species.

7(a)(1) Federal agencies must carry out their programs to conserve listed species.

## Consultations

### Purpose

1. Avoid jeopardy or adverse modification
2. Cover incidental take
3. Minimize effects
4. **Conserve species**



## Effect Determinations

Trigger = “May affect”

- No Effect = No consultation
- Is Not Likely to Adversely Affect = Informal Consultation
- Is Likely to Adversely Affect = **Formal Consultation**

# Section 9

## *Prohibited Acts*

### **Take**

“Harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in these activities.”

- Harm
  - Harass
- } 50 CFR 17.3



It is illegal to kill threatened or endangered species without just cause.

**Take of species applies to any person or Federal agency.**

# When do you prepare a BE?



- Natural state disturbance

- Federal funding



- Tribal action

# Who prepares a BE?



- “Action agency”
- Consultant

# BE Content



- Focus on the issue(s)
- Analytic
  - Not encyclopedic
  - “Less is more”



## Contents

- Survey results
- Species experts opinions
- Literature review
- Effects analysis
- Analysis of alternate actions





# How to prepare a BE



- PROJECT NAME (& NUMBER) and evaluation date.
- DESCRIPTION: Type of project, parts, dimensions, associated development
- LOCATION: Must **agree** with the legal survey
- MAP: USGS 7.5' topo-map; must **agree** with the legal survey
- RESEARCH: Is **habitat** present? ESA/NESL T&E Species present? Other biological resources of concern present? Biological **survey** is usually needed  
Surveyors must be permitted
- ANALYSIS: “Follow” the impacts. Describe impacts (**direct, indirect** and **cumulative**) including *take* and *effect*
- AVOIDANCE: Are changes to the project needed
- COORDINATION & CONSULTATION: NNDFW/NNHP and USFWS
- MITIGATION: **minimize** or **off-set**
- EVALUATION PREPARER: Name, telephone # **summary** of qualifications and signature



# BE Outline

- Cover letter
- Project Description
- For each species
  - Affected environment
  - Biology
  - Status
    - Rangewide
    - Action area
    - Cumulative effects
    - Previous consultations
  - Critical habitat

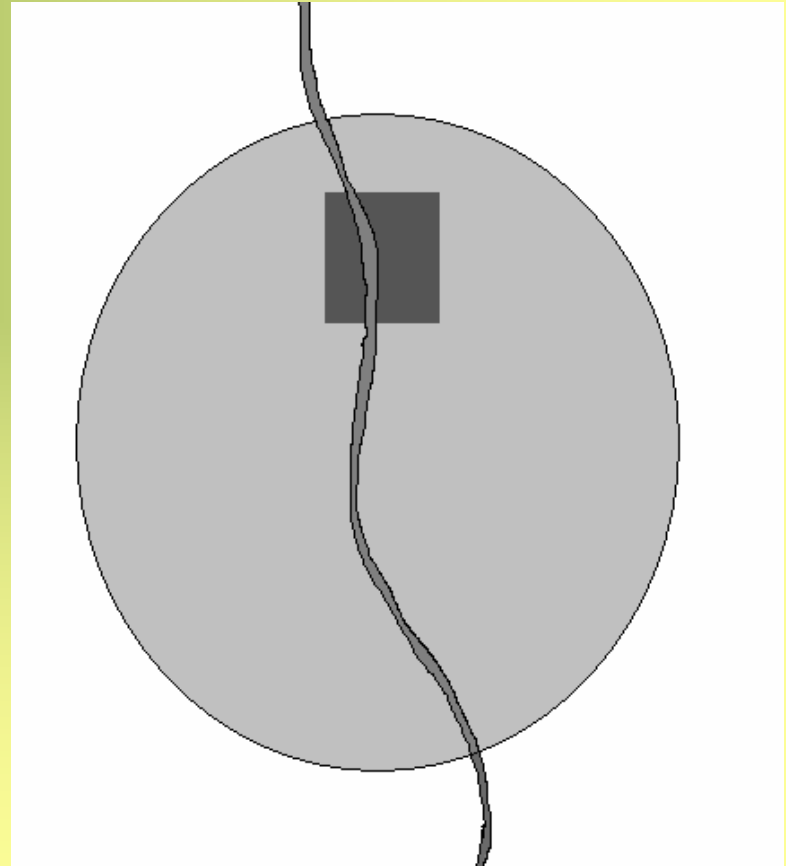


- For each species (cont'd)
  - ✓ Effects of action
    - Direct
    - Indirect
    - Interrelated and interdependent actions
    - Incidental take
- Conservation measures
- Conclusions
- Literature
- current Data Request form (2 years old or less)
- Contacts/Preparers (w/signatures)
- Maps/photographs



# Impacts

- Impacts vs. Effects
- Action Area vs. Project Area
- Cumulative Effects
- “Follow the impact”



# Where to start

- Good source of information



– Navajo Natural Heritage Program

- Clear idea of what you want to do

– Not “how you want to do it”



- BE outline

# Contacts

[www.nndfw.org/personnel.htm](http://www.nndfw.org/personnel.htm)