



Commitment and Collaboration among FHWA and Partners Leads to Successful Atlantic Salmon Programmatic

The U.S. Fish and Wildlife Service (FWS) listed the Atlantic salmon as endangered under the Endangered Species Act (ESA) in 2000, and designated their habitat as critical under the ESA in 2009. The listing and designation covers about two-thirds of the State of Maine, requiring ESA section 7 consultation on hundreds of transportation projects proposed by the Maine Department of Transportation (MaineDOT). The large number of consultations led to project delays due to a backlog of consultations with FWS. In 2013, the idea of a programmatic consultation was introduced as a way to expedite project delivery and streamline section 7 consultations for Atlantic salmon.

The Federal Highway Administration (FHWA), MaineDOT, the U.S. Army Corps of Engineers (USACE), and the Maine Turnpike Authority submitted a programmatic Biological Assessment (BA) to FWS in June 2016 and the programmatic consultation concluded when FWS issued a programmatic Biological Opinion (PBO) in January 2017. As a result, the programmatic consultation has reduced approval time for projects by 75 percent. Informal consultations will be completed in two weeks and formal consultations in one month. This is significantly faster than the allotted 30 days for completing informal consultations and 135 days for formal consultations. This programmatic BO was largely drafted by FHWA and MaineDOT staff, which is unprecedented for transportation agencies because FWS typically leads this part of the consultation process. This is also the first programmatic consultation for aquatic species affected by transportation projects on the east coast.

The programmatic consultation required significant coordination among the partners and was successful for several reasons: the consultation partners fostered trust and collaboration, they were willing to pursue new approaches, and they ensured their agencies' missions were aligned. This issue of *Successes in Stewardship* describes the programmatic consultation process; the unique role the FHWA played in expediting the programmatic agreement's completion; the benefits anticipated from implementation of the programmatic consultation; and best practices for agencies seeking a similar solution.

The Endangered Species Act

Since 1973, the ESA has protected the most vulnerable wildlife and plants across the United States. The ESA protects and promotes healthy ecosystems that provide clean air and water, and promotes working food chains necessary for environmental and public health.

Section 7 of the ESA, Interagency Cooperation, ensures Federal agencies coordinate on carrying out conservation programs to benefit endangered and threatened species and it ensures agencies' actions will not jeopardize a listed species.

A **project-specific** section 7 consultation has defined actions in set locations, which allows for site-specific descriptions and analysis of effects.

A **programmatic** section 7 consultation has many different actions in various locations across a state or region.

Solid Groundwork Laid During the BA Led To Successful Programmatic Consultation

A programmatic consultation can be daunting because large portions of a transportation program must be broken down into common components to support an effects analysis that lacks the benefit of site-specific design. Typical construction methods, scenarios, and effects in a programmatic consultation are identified by reviewing past consultations (i.e., BAs and BOs). Then reasonable predictions must estimate the volume and types of projects expected to seek coverage and their associated effects on Atlantic salmon. These predictions are then tested through project-specific forms designed to concisely capture site-specific information that documents conformance with the BO. MaineDOT submits this form to FWS for an expedited consistency review.

The Maine Atlantic Salmon programmatic consultation covers bridge and culvert projects within the species' entire range in Maine. To complete such a complex programmatic, in 2012 the partners began educating themselves on the programmatic process by contacting colleagues on the west coast who had completed their own aquatic species programmatic and by reading other programmatic consultations. Reconciling the viewpoints of participating agencies is another important first step during a programmatic consultation. For example, MaineDOT strives to build transportation infrastructure in the most efficient manner possible, and FWS wants to protect and conserve natural resources.



The partners understood the importance of face-to-face meetings, and made an effort to convene in person to work through the consultation as a team. (Image courtesy of MaineDOT)

Through the section 7 process agencies determine how negative effects from projects can be mitigated to protect endangered or threatened species. Effective mitigation can be challenging for FHWA or the State DOT when budgets and schedules are a priority to completing infrastructure projects when planned. It is important for agencies to meet at the beginning of the programmatic consultation process to share information about protocols, needs, challenges, and goals, so that each has a good understanding of what is required by the others for the programmatic consultation to be successful.

Progress on the programmatic was initially slow because other projects took precedence and limited staff and resources were available among the agencies for the effort. In 2013, the FHWA Office of Project Development and Environmental Review (HEPE) awarded MaineDOT's application an Eco-Logical grant to support development of the BA. The Eco-Logical grant funded MaineDOT staff and several inter-agency meetings over the course of the next year. This led to the development of a schedule, work assignments for the partners, and an initial draft of the BA.

FHWA Eco-Logical Grant Propels the BA

MaineDOT was named the recipient of a \$250,000 Eco-Logical Implementation Assistance grant in 2013. The Eco-Logical grant encourages State DOT engagement and collaboration with partners early in the BA development process.

In 2013, FHWA [distributed 14 Implementation Assistance Grants](#) to State DOTs and metropolitan planning organizations (MPOs) to advance implementation of Eco-Logical.

[Eco-Logical](#) is an approach to accelerating project delivery that organizes current methods for addressing natural resource identification, avoidance, minimization, and mitigation into a systematic, step-wise process. The process starts with the transportation planning process and concludes with establishing programmatic approaches to recurring natural resource issues that are implemented at the project level.

Despite this momentum, efforts stalled because FWS had staff turnover during the development of important construction design parameters. Meanwhile, a backlog of transportation projects requiring section 7 consultations grew. As pressure mounted, FHWA, FWS, and MaineDOT leadership met in early 2016, and consensus was reached on the importance of completing the programmatic consultation. MaineDOT expressed their urgent need to replace failing culverts across the state, stressing that without their repair or replacement, catastrophic results would inevitably occur. FWS responded by dedicating staff at their Regional Office to assist in the development of the programmatic BO. Leadership at each agency committed to securing the necessary resources to move the consultation forward.

In June 2016, the agencies achieved a major milestone when they submitted the programmatic BA and initiated formal consultation with FWS. The programmatic BA proposed a range of activities required for the construction, preservation, and maintenance of the Maine transportation system that were likely to result in unavoidable effects to Atlantic salmon or its critical habitat. The programmatic consultation estimated approximately 60 projects (e.g., bridge replacements and scour countermeasures) would go

through consultation annually, the number of culvert replacements would double, and bridge replacement projects would substantially increase.

Development of the final programmatic BA established a core technical team of staff from MaineDOT, the FHWA Maine Division Office, and the FHWA Resource Center, who later led the development of the programmatic BO. This team offered both local biological and transportation expertise and national programmatic consultation development experience, which was essential to the completion of the consultation.

Strong Leadership from FHWA and Collaboration Among the Partners Expedited the PBO

The trust established among the partners early in the BA process enabled FHWA to lead facilitation of the draft PBO. FHWA, in partnership with MaineDOT, authored the draft programmatic BO and coordinated the process closely with FWS and USACE. All agencies recognized that staff turnover at FWS was creating schedule challenges, meaning timely delivery of the PBO would depend largely on technical expertise from the FHWA Resource Center and local knowledge from MaineDOT and the FHWA Maine Division Office.

Each agency identified a point of contact, or champion, who represented the interests of their agency and coordinated all of their agency's comments. This reduced the number of people directly involved in developing the programmatic BO, which decreased the amount of time the agencies had to spend on communicating their comments and perspectives during each review period. It is critical to dedicate staff and resources to completing programmatic consultations because their development coincides with the delivery of standard project consultations. This requires agency leadership to emphasize the long-term benefit of these complex consultations, even if it comes at the cost of short-term project delays. Through close coordination with FWS and USACE, FHWA and MaineDOT developed a schedule and work plan and arranged a standing weekly meeting to ensure steady progress in achieving milestones. All parties agreed on a PBO template and on each agency's assignments, and FHWA and FWS together identified critical decision points and worked through them without delays. All partners committed to prioritizing the work over a 3-month period, which helped ease scheduling conflicts and promoted quick turnaround on reviews.

When starting the programmatic BO, MaineDOT and FHWA critically assessed the design standards and effect minimization measures that MaineDOT already applied in bridge and culvert consultations. Mutually accepted standards were incorporated and best practices from west coast states were considered and added.

Faster, Simpler Approval Processes Yield More Construction-Ready Projects

The programmatic's standardized process is expected to reduce review times and improve predictability in project design and on project approvals, particularly for bridge and culvert projects. Incomplete or unavailable information at the time of development and uncertainty around resource agency expectations meant many prior BAs were speculative. This uncertainty lengthened project delivery timelines, since conditions or available information evolved during review or after a project received approval.

Less conjecture and accelerated review periods are expected to lead to more construction-ready projects, since the programmatic consultation standardizes many design standards and minimization measures that may have previously been unclear. The project notification form will inform project managers and agency partners early in the project development process if a mitigation effort must be identified and approved, or if their efforts will require no further review. Having access to this information early in project development empowers organizations to make choices about paying for mitigation or seeking other alternatives.

MaineDOT, like many State agencies nationwide, is frequently expected to manage an increasing number of responsibilities with fewer resources. Significantly reducing the time a MaineDOT biologist typically spends developing a BA will have a drastic effect on the work that these biologists can accomplish. Rather than focusing on documenting effects, agencies will be able to assess more resources, such as streams where Atlantic salmon occur, and coordinate more frequently on projects with resource agencies like FWS.



A culvert is constructed in Maine following the programmatic consultation. (Image courtesy of MaineDOT)

As a result, projects that once required a BA, which could be between 50 to 100 pages in length, can instead use a standard, multi-page checklist that documents project-specific conformance with the BO. A project qualifies for processing under the programmatic BO depending on its location, the quality of habitat, design parameters, and construction methods.

PBO Implementation Is Underway and Potential for Future Collaboration Grows

The Atlantic salmon programmatic consultation sets a standard for what will be the first of many future collaborative efforts among the partners. The improved predictability for project approvals afforded by the programmatic consultation should save MaineDOT and FHWA time and money, and will serve as a platform for improved relationships and greater collaboration among the partner agencies. Additionally, the time savings associated with this expedited process will allow FWS staff to dedicate more time to highly sensitive projects and conservation efforts. Perhaps most importantly, this programmatic consultation will help protect the endangered Atlantic salmon while moving important transportation projects closer to completion.

The partners will track the impacts and results of the programmatic as it becomes fully implemented. Ideally, these results will inspire similar local and national efforts, providing a replicable template for communications, coordination, and conservation.

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