



## Endangered Species Consultation

By Christopher A. Phillips and Keith M. Shank

In 1986, the Illinois General Assembly amended the Illinois Endangered Species Protection Act (520 ILCS 10/1 et seq.), adding a provision intended to engage all state and local governments in efforts to conserve and recover state-listed endangered or threatened (E/T) species. The amendment, modeled on Section 7 of the federal Endangered Species Act of 1973 (16 USC 1537), mandates that all state and local governments evaluate whether actions they authorize, fund, or carry out are likely to jeopardize the continued existence of Illinois' listed species or may result in the destruction or adverse modification of these species' essential habitats. Agencies and local governments meet their obligations under the act by consulting with the Illinois Department of Natural Resources (IDNR), a requirement enforceable through court order (a writ of mandamus). The consultation process is the act's only mechanism for protecting listed species' essential habitats.

Consultation is implemented through Title 17, Part 1075 of the Illinois Administrative Code. Effective since December 1990, Part 1075 is the state regulation that establishes consultation criteria and procedures. The consultation process, often referred to as "Endangered Species Consultation," begins when an agency files an agency action report notifying the IDNR of its intent to pursue an action. Obvious examples of "agency actions" that require consultation include the widening of a state highway or the building of a municipal

golf course. Less obvious examples include private sector projects that require specific types of zoning changes or permits approved or issued by state agencies or local governments. For example, a proposal to build a subdivision on land currently zoned for agriculture would require consultation.

Within 30 days of receiving an agency action report, the IDNR determines whether a listed species or its habitat is "in the vicinity" of the proposed action. The meaning of "vicinity" varies depending on the nature of the listed species or habitat, the nature of the action, and the relationships between them. The location of the proposed action is checked against a statewide database of listed species observations. On average, only 5 percent of actions reviewed by the IDNR are determined to be "in the vicinity" of a protected species or its habitat. Consultation is terminated for actions that are not "in the vicinity."

For actions that are "in the vicinity," the IDNR will ask the agency to prepare a detailed action report that provides additional data about the proposed action and environment. Acquiring the information necessary to complete this report may involve biological, hydrological, or geological investigations. The consulting government is responsible for obtaining this information. Depending on resource availability, the IDNR may offer technical assistance to accomplish this task.

The IDNR uses the information in the detailed action report to assess the nature and probability of potential adverse effects to the E/T species or its habitat. Within 60 days, the IDNR issues its findings as a "biological opinion." If the biological opinion concludes that the proposed action is likely to promote conservation of the species or its habitat or that the action is unlikely to adversely affect the species or its habitat, consultation is terminated. Only about half of the actions "in the vicinity" of an E/T species result in opinions requiring further consultation. In fiscal year 2000, for example, the IDNR required additional consultation for more than 400 of the almost 9,000 detailed action reports it reviewed.

If the IDNR concludes the action is likely to adversely affect the listed species or its habitat, it will formulate recommendations for the state agency or local government. The consulting government then determines whether and to what extent it wishes to implement the recommendations and notifies the IDNR accordingly. IDNR recommendations are usually consistent with the action going forward, except in rare cases when implementation of a proposal will inevitably destroy a species population. A consulting government may *not* proceed with an action that will kill a listed animal species. After the consultation process is complete, the IDNR rates its success in reducing the risk to the listed species or its habitat. Approximately one-third of "adverse effect"

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consultations are rated “very successful.”

Many people expect the presence of state-listed E/T species will prevent the implementation of a proposed action, but this is seldom true. In most cases, the project may be modified to minimize or avoid adverse impacts. For example, in 1999 a businessman proposed constructing an office building in the village of Algonquin, but the property contained a portion of a wetland occupied by nesting yellow-headed black birds (state endangered) and pied-billed grebes (state threatened). During the consultation process, the developer, the village, the IDNR, and the U.S. Army Corps of Engineers worked together to devise a plan that allowed the development to proceed after wetland mitigation

and enhancement. As a result, habitat for the two listed species was both expanded and improved, while Algonquin acquired the entire wetland as part of its park system and, at the same time, expanded its commercial tax base.

Endangered Species Consultation facilitates development while protecting, as much as possible, our imperiled species and their habitats. Early initiation of the consultation process is in the best interest of all parties concerned. It is far better to know of any environmental issues with a project during the early planning stages, when many alternatives are available, than at later stages, when such news may jeopardize months or years of planning and investment. Agencies and local governments

should also keep in mind that, if the consultation process is omitted or ignored, mandamus proceedings may be brought by any adversely affected person. Two such suits have occurred within the last few years, one of which was appealed to the Illinois Supreme Court. The risk of such litigation and its associated costs is an additional incentive to participate in the consultation process.

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