

**United States
Department of
Agriculture
Forest Service**

**United States
Department of
Commerce
National Oceanic
and Atmospheric
Administration
Fisheries**

**United States
Department of
the Interior
Bureau of
Land Management**

**United States
Department of
the Interior
Fish and
Wildlife Service**

Reply to:

Date: June 4, 2004

AES/Consultation

BLM/FS/FWS/NOAA Fisheries-Memorandum

To: FS Supervisors (Regions 1, 4, and 6)
NOAA Fisheries Habitat State Directors and Habitat Branch Chiefs (NW Region)
BLM District/Field Managers (Oregon, Washington, and Idaho)
FWS Field Supervisors (Pacific Region)

From: Regional Executives
FS (Regions 1, 4, and 6)
NOAA Fisheries (NW Region)
BLM (Oregon, Washington, and Idaho)
FWS (Pacific Region)

Subject: Interagency Options for Streamlining Section 7 Consultation Through
Sharing/Contracting Staff and Efficient Development of Consultation Documents

The purpose of this memorandum is to address two of the action items identified in our January 24, 2003, memorandum (Improving the Effectiveness of Endangered Species Act (ESA) Implementation [ICS Memo #1]) by presenting a full range of options for sharing/contracting staff and streamlining the development of consultation documents (i.e., biological/conference opinions or concurrence letters) prepared under section 7 of the ESA. These options are meant to complement existing streamlining procedures.

We encourage agency managers and staff to become familiar with and to implement the options identified below where appropriate. Taking advantage of these options will help us accomplish our shared mission in times of staff shortages, heavy workloads, or when expediency is critical.

Options for Sharing/Contracting Staff

Informal Interagency Staff Loans

Informal interagency staff loans should be considered when specific needs arise that would benefit both agencies through the sharing of staff and when rigorous agreements between the agencies are not necessary due to the nature of the staff loan, the complexity of the task and/or the duration of the loan. The supervisor, workplan, office space, and any compensation can be negotiated on a case-by-case basis as necessary.

The employee and the agencies gain numerous benefits including a better understanding of the diverse roles played by our agencies in accomplishing our shared mission and a better understanding of the limitations faced by other agencies. Equally important, this arrangement often provides opportunities to identify different ways of doing business that are mutually beneficial. The advantages of this option include: expediency, informality, and a clearly defined work task.

Interagency Agreement (IAG)

The interagency agreement (IAG) program represents a more formal opportunity to share employees. An IAG may be more appropriate than an interagency staff loan when the work would be carried out over longer time periods or when there is a perceived need to enter into a formal agreement. The IAG program provides a career development opportunity for highly skilled individuals who will continue to contribute to our overall mission in the future. There are numerous examples throughout the Pacific Northwest of the positive benefits achieved by our agencies under this program, which fosters a better understanding of our shared mission. We encourage you to continue to identify opportunities to resolve long-term permitting/consultation workload needs by utilizing this option.

Short-term Contract

Some situations may benefit from short-term contracts to fulfill a specific permitting or consultation need. Third-party contractors could be used either by action agencies or the Services. In these cases, early identification of the need for such a contract is important to facilitate timely development of a contracting agreement. This option is especially well suited for situations involving large, complex, and discrete consultations.

We continue to encourage interagency dialogue on upcoming workload and staff priorities. Interagency workload assessments can be a useful tool for highlighting areas where management assistance is needed to address priorities and bottlenecks. Workload assessments are critical for providing realistic expectations for Level 1 and Level 2 teams, keeping management representatives apprised of potential issues, and for meeting permitting and consultation time-frames. Early identification of upcoming issues will provide agency managers the opportunity to exercise increased flexibility in prioritizing and distributing their workload.

Options for Streamlining Consultation Documents

Consultation streamlining procedures are currently in place for programmatic consultations nationwide and for project-level activities within the Northwest Forest Plan and Interior Columbia Basin Strategy boundaries. Counterpart regulations pertaining to the President's Healthy Forest Initiative may further streamline section 7 procedures for some informal consultations. The options identified below, when implemented, are expected to complement the existing streamlining procedures by improving the efficiency with which we develop consultation documents.

Incorporation of Biological Assessment Findings into Biological Opinions

We encourage action agency and regulatory agency biologists to work together to ensure that the format and analytical content of biological assessments (BAs) correspond to the greatest extent possible to the Services' consultation documents. Consistency in format and content between these documents will streamline the consultation process.

Interagency Support in Drafting Biological Assessments and Biological Opinions

We encourage action agency and regulatory agency biologists to use the staff sharing options outlined above to assist each other in drafting biological assessments and biological opinions when necessary to complete consultations in a timely and effective manner. When staff are shared to assist with the development of biological assessments or biological opinions each agency retains full document review and signature authority.

Joint Consultation Documents

The FWS is responsible for most terrestrial and freshwater species, whereas NOAA Fisheries is responsible for most marine and anadromous species. The distribution of species or critical habitats under each agency's jurisdiction may overlap, particularly in coastal areas or watersheds with anadromous fishes. Federal action agencies and their applicants have raised concerns regarding the potential for inefficiencies, inconsistencies, and conflicts stemming from the need to consult with both Services for a single action. Completing joint consultation is one means of addressing these concerns.

Notwithstanding the intent to complete joint consultation, it should be recognized that the conclusions of each Service may be inherently different because species under their respective jurisdictions often have different biological and conservation needs. In these situations the Services will work closely to identify reasonable and prudent alternatives (RPAs), reasonable and prudent measures (RPMs) and terms and conditions (T&Cs) that do not conflict.

The Services, in coordination with the Federal action agency, can select from the options below to increase efficiencies where listed species and critical habitats under the jurisdiction of both Services are affected by a proposed action. If consensus with the action agency cannot be reached, the Services will ultimately decide on the option that is most appropriate. For all options, each Service retains full document review and signature authority:

Separate Consultation Documents

Under this option, the Services develop separate consultation documents, ensuring that analyses and consultation timelines are consistent, and that any RPAs, RPMs, or T&Cs are well coordinated. Early and frequent inter-Service coordination during the development of separate consultation documents can often result in a more efficient process and more consistent documents. This option has been the most common way to consult when species under both jurisdictions may be affected by the same action.

2. Joint Development of Portions of Separate Consultation Documents

Under this option, the Services jointly develop portions of the consultation document that are not species or critical habitat dependent (in a biological/conference opinion this would include the following sections: introduction, consultation history, description of the proposed action, and reinitiation - closing statement). Each Service inserts these jointly developed sections into their own separate consultation document. This option reduces duplication of work by the Services and results in more consistent documents.

3. Joint Development of Portions of Separate Consultation Documents, with One Consultation Document for Listed Fish

This option is the same as the *Joint Development of Portions of Separate Consultation Documents* option, but the Services work collaboratively on the status of the species, environmental baseline, effects of the action, conclusion sections for listed fish species and their critical habitats, and any Essential Fish Habitat (EFH) consultation is integrated as applicable. The Services jointly develop an Incidental Take Statement (ITS) with a single set of RPAs or RPMs with T&Cs, as appropriate for listed fish species. FWS develops a separate consultation document for non-fish species, but ensures that analysis and consultation timelines are consistent with NOAA Fisheries, and that any RPAs, RPMs, or T&Cs are well coordinated.

4. Joint Development of Portions of a Single Consultation Document

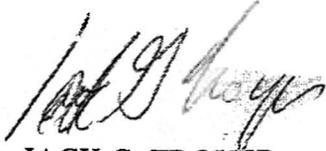
Under this option, the Services jointly develop portions of the consultation document that are not species or critical habitat dependent (in a biological/conference opinion this would include the following sections: introduction, consultation history, description of the proposed action, and reinitiation - closing statement). The Services separately, but in close coordination, develop the status of the species, environmental baseline, effects of the action, cumulative effects, and conclusion sections for species and critical habitats under their respective jurisdictions. The Services jointly develop an ITS with a single set of RPAs or RPMs with T&Cs, as appropriate. When required, the action agency completes EFH consultation components with NOAA Fisheries. The Services collaboratively integrate this information including any EFH component into a single document that is transmitted under joint signature to the action agency. Although this option maximizes consistency and eliminates the chances of developing contradictory ITSs, it may also be more time-consuming due to the increased level of coordination required.

5. Lead Service Development of a Single Consultation Document

Under this option, one of the Services acts as the lead for completing consultation on species or critical habitats under the jurisdiction of both Services. The lead Service is responsible for primary coordination and cooperation with the action agency and the supporting Service, and is responsible for preparation of the entire consultation document including any EFH consultation component that might be necessary. The supporting Service assists the lead Service, as needed, or as established by mutual agreement developed at the local or regional level. The consultation document is transmitted under joint signature to the action agency.

In closing, we very much appreciate your efforts in striving to achieve our shared mission and we encourage you to continue to take advantage of the full range of resources and opportunities available to you through the streamlined consultation procedures.

Sincerely,



JACK G. TROYER
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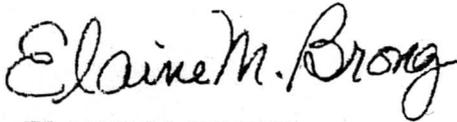
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