

MEMORANDUM OF UNDERSTANDING
BETWEEN
FISH AND WILDLIFE SERVICE
OREGON PARKS AND RECREATION DEPARTMENT
OREGON DEPARTMENT OF FISH AND WILDLIFE
BUREAU OF LAND MANAGEMENT, COOS BAY DISTRICT
FOREST SERVICE, SIUSLAW NATIONAL FOREST
AND
U.S. ARMY CORPS OF ENGINEERS

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the Fish And Wildlife Service (FWS), Oregon Parks and Recreation Department (OPRD), Oregon Department of Fish and Wildlife (ODFW); Coos Bay District Bureau of Land Management (BLM), and United States Department of Agriculture Forest Service, Siuslaw National Forest, (USFS) and U.S. Army Corps of Engineers (Corps) collectively referred to as “parties.”

A. PURPOSE:

The purpose of this MOU is to provide a framework for cooperation and achievement of mutual goals among the participating State and Federal agencies regarding conservation of the Western Snowy Plover (WSP). The goals of the participants in this MOU are to:

1. To collectively support each party’s accomplishment of their individual Endangered Species Act responsibilities and objectives, including:
 - a. Coordinate the implementation of OPRD’s HCP;
 - b. Provide a framework for the BLM, USFS, and Corps to meet their section 7(a)(1) and 7(a)(2) responsibilities; and
 - c. Ensure coordination between all parties to promote recovery of the western snowy plover.
2. To ensure coordination between the parties in the implementation of each of the terms of the OPRD Habitat Conservation Plan for the Western Snowy Plover (HCP).

B. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The parties are committed to conserving western snowy plovers and their habitat on the Oregon Coast while providing coastal recreational opportunities which help to improve the quality of life and healthy interaction with the natural environment. Plovers occur and are dependent on a healthy coastal ecosystem. The Parties are the primary stewards for plovers and plover habitat on Oregon’s beaches and are committed to cooperative management of the natural and recreational resource.

Plover habitat is divided by ownership and management responsibility, and their daily activities require plovers to move among land ownerships multiple times during a day. The dynamics of tides, storm surges, wind, sand movement and dune stabilization combined with a dynamic metes

and bounds landline (mean high tide), makes identification of management boundaries are difficult to determine on the ocean shore.

Federal agencies have been individually managing plover nesting areas and nesting and wintering habitat for decades. Each agency is individually responsible for ensuring compliance with section 7 of the Endangered Species Act of 1973, as amended (ESA) and have worked together to accomplish conservation goals for the plover.

OPRD is responsible for management of Oregon's Ocean Shore, including management of recreation. In addition, OPRD owns several locations that support or have the potential to support plovers. In order to ensure compliance with section 10 of the ESA, they have developed a HCP to obtain an incidental take permit for take associated with activities that impact plovers and occur on lands under their jurisdiction. The covered lands in this HCP are adjacent to lands managed by BLM, USFS, and Corps, and the covered activities and conservation measures will have an effect on the management of these adjacent lands.

FWS is the agency primarily responsible for administering and ensuring compliance with a variety of the ESA requirements. In addition, FWS plans and monitors the status and recovery of the plover across its range.

ODFW is responsible for providing accurate technical information and expertise to Oregon agencies and has a responsibility for cooperation under section 6 of the ESA. As the primary wildlife management agency in the State of Oregon, their commitment and cooperation in the conservation of imperiled state resources is essential. ODFW also has responsibilities arising under the Oregon Endangered Species Act, under which the snowy plover is listed as threatened.

Successful protection and recovery of snowy plovers requires a unified and consistent approach to management by all agencies with responsibility for western snowy plover conservation. To encourage public participation and compliance with protection measures, coordination between all parties is vital to implement effective and consistent resource management. This memorandum of understanding provides a framework for the needed coordination and will benefit each of the parties by clearly establishing roles and responsibilities, and helping them achieve these mutual interests.

C. DEFINITIONS

The following terms as used in this MOU will have the meanings set forth below:

1. Terms defined in ESA. Terms used in this MOU and specifically defined in the ESA, or in regulations adopted by the Service under the ESA, have the same meaning as in the ESA and those implementing regulations, unless this MOU expressly provides otherwise.
2. "HCP" means the Habitat Conservation Plan for Western Snowy Plovers prepared by OPRD.

3. "Listed species" means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is listed as endangered or threatened under the ESA.
4. "Parties" collectively mean the OPRD, ODFW, FWS, BLM, USFS, and Corps.
5. "Permit" means the incidental take permit issued by the Service to OPRD pursuant to Section 10(a)(1)(B) of the ESA for take incidental to the covered activities on Oregon's ocean shore, as it may be amended from time to time.
6. "Recreation Management Area (RMA)" all sites identified, in the HCP, as plover sites that are owned by entities other than OPRD. OPRD manages recreation on the Ocean Shore in these areas.
7. "Site Management Plans" will address the general management, recreation use, and plover management, as described for RMAs in section 5.3.1 of the HCP. Site management plans will consist of land management plans or other similar documents, provided they contain the information described in Attachment 1.
8. "Snowy Plover Management Areas (SPMA)" consist of the five sites that are owned or leased by OPRD and are either occupied by plovers or targeted for future plover management.

D. ALL PARTIES SHALL

1. Cooperatively manage RMAs and/or SPMA's in a manner that is consistent with the HCP, as described in individual site management plans.
2. Seek and share information in the development of site management plans and share completed documents.
3. Meet annually, within 45 days of the close of the plover nesting season, to coordinate activities regarding plovers with the parties to this MOU.

E. FISH AND WILDLIFE SERVICE SHALL:

1. Fulfill the obligations described in the HCP and its implementing agreement.
2. Cooperate with parties to provide technical assistance regarding plover conservation as needed.
3. Work with USFS and BLM to formalize the "Streamlined Consultation Procedures for Section 7 of the Endangered Species Act" (Attachment 2) for future plover consultations by December 2011.
4. Coordinate annual surveys of wintering and nesting plovers.

F. OREGON PARKS AND RECREATION DEPARTMENT SHALL:

1. Fully and faithfully perform all obligations assigned to it under this MOU, the permit, and the HCP.
2. Provide copies of their annual report, required as a condition of the HCP, to all parties.

G. OREGON DEPARTMENT OF FISH AND WILDLIFE SHALL:

1. Fulfill the obligations described in the HCP and its implementing agreement.
2. Cooperate with parties to provide technical assistance regarding plover conservation as needed.
3. To the extent allowed by the Oregon Public Records Law, provide relevant data, information, reports, or publications regarding plover biology and conservation when available.
4. Provide relevant data, information, reports, or publications regarding plover conservation when available.

H. BLM SHALL:

1. Be responsible for all regulatory compliance on Federal lands administered by BLM.
2. Prepare site management plans for all BLM-managed, occupied RMAs, consistent with the HCP.
3. Work with USFS and FWS to formalize the "Streamlined Consultation Procedures for Section 7 of the Endangered Species Act" (Attachment 2) for future plover consultations by December 2011.

I. USFS SHALL:

1. Be responsible for all regulatory compliance on Federal lands administered by USFS.
2. Will prepare site management plans for all USFS-managed, occupied RMAs, consistent with the HCP.
3. Work with BLM and FWS to formalize the "Streamlined Consultation Procedures for Section 7 of the Endangered Species Act" (Attachment 2) for future plover consultations by December 2011.

J. CORPS OF ENGINEERS SHALL:

1. Be responsible for all regulatory compliance on Federal lands administered by the Corps.

2. Prepare, subject to the availability of funds, site management plans for all Corps-managed, occupied RMAs, consistent with the HCP.
3. Pursue involvement in the USFS/BLM/FWS team established to formalize the “Streamlined Consultation Procedures for Section 7 of the Endangered Species Act” (Attachment 2) for future plover consultations by December 2011.

K. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

1. FREEDOM OF INFORMATION ACT (FOIA). Any information furnished to the Federal agencies under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552).
2. OREGON PUBLIC RECORDS LAW. Any information furnished to the State agencies under this instrument is subject to the Oregon Public Records Law (ORS 192) unless inapplicable in a matter of federal law.
3. PARTICIPATION IN SIMILAR ACTIVITIES. This instrument in no way restricts the parties to this MOU from participating in similar activities with other public or private agencies, organizations, and individuals.
4. COMMENCEMENT/EXPIRATION/TERMINATION. This MOU takes effect upon the signature of the USFS, BLM, Corps, FWS, ODFW and OPRD and shall remain in effect for 5 years from the date of execution. This MOU may be extended or amended upon written request of any party and the subsequent written concurrence of the other(s). Any party may terminate this MOU with a 60-day written notice to the other(s).
5. RESPONSIBILITIES OF PARTIES. Each party will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.
6. PRINCIPAL CONTACTS. The principal contacts for this instrument are:

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Corps Project Contact

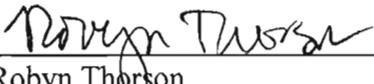
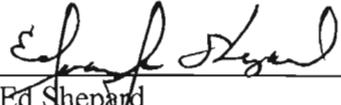
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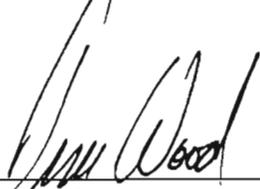
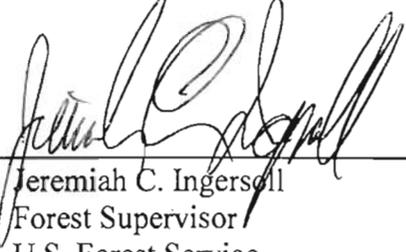
Corps Administrative Contact

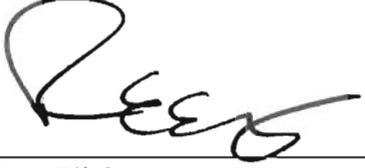
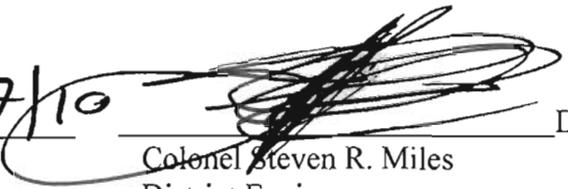
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7. NON-LIABILITY. The parties to this agreement do not assume liability for any third party claims for damages arising out of this instrument.
8. ENDORSEMENT. Any one party's contributions made under this MOU do not by direct reference or implication convey any of the other party's endorsement of their products or activities.
9. NON-FUND OBLIGATING DOCUMENT. Nothing in this MOU shall obligate any party to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the parties will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.
10. ESTABLISHMENT OF RESPONSIBILITY. This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.
11. AUTHORIZED REPRESENTATIVES. By signature below, the cooperator certifies that the individuals listed in this document as representatives of the cooperator are authorized to act in their respective areas for matters related to this MOU.

THE PARTIES HERETO have executed this instrument. BY:

 Date 12/17/10  Date 12/17/10
 Robyn Thorson Ed Shepard
 Regional Director State Director
 U.S. Fish and Wildlife Service Bureau of Land Management
 Portland, Oregon Portland, Oregon

 Date 12/17/10  Date 12/17/10
 Tim Wood Jeremiah C. Ingersoll
 Director Forest Supervisor
 Oregon Parks and Recreation Department U.S. Forest Service
 Salem, Oregon Corvallis, Oregon

 Date 12/17/10  Date 17 Dec 2010
 Roy Elicker Colonel Steven R. Miles
 Director District Engineer
 Oregon Department of Fish and Wildlife Portland District Corps of Engineers
 Salem, Oregon Portland, Oregon

 Date 12/17/10
 Suzanne Knapp
 Acting Natural Resources Advisor
 State of Oregon
 Salem, Oregon

Site Management Plan Outline for Snowy Plover Management Areas

The Oregon Parks and Recreation Department (OPRD) will be preparing site management plans for each of the occupied and unoccupied snowy plover management areas (SPMAs) that OPRD owns and manages. These sites are:

- Columbia River South Jetty (Fort Stevens State Park),
- Necanicum Spit (Gearhart Ocean State Recreation Area),
- Nehalem Spit (Nehalem Bay State Park),
- Netarts Spit (Cape Lookout State Park), and
- Bandon (Bandon State Natural Area).

These plans will describe how the department will manage these sites both for recreational use and for snowy plover management. The site management plans will contain the following:

1. Legal Description and Map
 - a. Township/Range/Section
 - b. Topography map showing boundaries
 - c. Aerial photo showing boundaries
2. Landownership and Management History
 - a. Who currently owns the property
 - b. Current land uses
 - c. Historic land uses
3. Site Description (both historical and current)
 - a. Beach morphology

- b. Upland conditions
- c. Plover habitat conditions
- 4. Regulations governing the site
 - a. Local, state, and federal laws and regulations that may affect implementation of the site management plan
- 5. Status of snowy plover at this site (historical and current)
 - a. Population
 - b. Nest success
- 6. Human Use
 - a. Recreation
 - b. Non-recreation uses
- 7. Management Issues
 - a. Human disturbance
 - i. Recreation
 - ii. Non-recreation
 - a. Habitat
 - b. Predation
- 8. Conservation Measures
 - a. Habitat restoration and maintenance
 - i. When and where habitat will be restored
 - ii. When and where maintenance will occur
 - b. Predator management
 - i. What predators are present
 - ii. What types of non-lethal and lethal methods will be used
 - c. Monitoring
 - i. Breeding season monitoring, where applicable
 - ii. Presence/Absence Monitoring - Frequency

9. Recreation Management Measures

- a. Symbolic fencing
- b. Access
 - i. Identify recognized access points and related corridors to the wet sand
 - ii. What access points will remain versus access points that may be re-routed to keep recreational users out of key habitat areas
- c. Signage
 - i. Interpretive signs
 - ii. Plover Management Area boundary signs
- d. Public outreach and education
 - i. Types of outreach efforts that will be undertaken
- e. Enforcement
 - i. Who will perform enforcement of restrictions
 - ii. When will enforcement be performed (year-round, seasonally)
 - iii. Whether any special permitting or contracting is required

For recreational management areas (RMAs) listed below that are not owned or leased by OPRD, site management plans will be prepared either by the Oregon Department of Fish and Wildlife or the responsible land management agency in consultation with the U.S. Fish and Wildlife Service.

- Bayocean Spit
- South Sand Lake Spit
- Sutton/Baker Beach
- Siltcoos Estuary/Dunes Overlook/Tahkenitch Estuary
- Tahkenitch South
- Umpqua River North Jetty
- Tenmile Estuary
- Coos Bay North Spit
- New River
- Elk River Spit
- Euchre Creek

United States Department of Agriculture Forest Service	United States Department of Commerce National Oceanic and Atmospheric Administration Fisheries	United States Department of Interior Bureau of Land Management	United States Department of Interior Fish and Wildlife Service
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Reply to: 2670(FS)/6840(BLM)

Date: May 27, 2003

FS/NOAA Fisheries/BLM/FWS-Memorandum

To: Forest Service Supervisors (Regions 1, 4, 6), USDI Fish & Wildlife Service Field Supervisors (Region 1), USDI Bureau of Land Management District/Field Managers (OR/WA, ID, and MT), and USDC National Oceanic and Atmospheric Administration Fisheries Project Managers (Northwest)

Subject: Implementing Streamlined Consultation Procedures for Section 7 of the Endangered Species Act (excluding California) – (ICS Memo #2)

As the Regional Executives representing the Forest Service (FS), the Bureau of Land Management (BLM), the Fish and Wildlife Service (FWS), and the National Oceanic and Atmospheric Administration (NOAA) Fisheries, we are re-issuing the *Streamlined Consultation Procedures for Section 7 of the Endangered Species Act - July 1999* (see the interagency ESA website listed below) for the geographic area encompassing the Northwest Forest Plan, PACFISH/INFISH (excluding California), and the range of the threatened bull trout, and related Biological Opinions. By doing so, we are reaffirming our commitment to these procedures as our basic approach to meeting our collective responsibilities under Section 7 of the Endangered Species Act (ESA). We continue to endorse the establishment of interagency Level 1 and Level 2 teams, a Regional Technical Team (RTT), Interagency Coordinators (IC's), and an Interagency Coordination Subgroup (ICS) as the foundation for implementing these procedures here in the Pacific Northwest.

We are incorporating most of the documents referenced in this memorandum on the newly developed interagency ESA website: www.or.blm.gov/esa/. These documents form the basis of our interagency efforts to effectively implement and improve the streamlined consultation process.

We believe the streamlined approach to consultation plays a significant role in achieving our shared mission to "... *enhance conservation of imperiled species while delivering appropriate goods and services provided by the lands and resources managed by the signatory agencies*" as described in our *National Memorandum of Agreement Regarding Endangered Species Act Section 7 Programmatic Consultation and Coordination – August 30, 2000* (see the interagency ESA website listed above).

Pursuant to our January 24, 2003, memo (attached) entitled, *Improving the Effectiveness of Endangered Species Act (ESA) Implementation (ICS Memo #1)*, an Interagency Coordination

(11-MU-11061200-001)
Implementing Streamlined Consultation Procedures for Section 7 of the Endangered Species Act (ICS Memo #2) –
May 27, 2003

Subgroup (ICS) was established to oversee further improvements to the streamlined consultation process. We have asked the ICS to be the focal point for oversight and timely resolution of streamlined consultation related issues with regard to implementing these important streamlined consultation procedures.

In addition to the ICS, the proactive support and personal involvement from BLM District and Field Managers, FS Forest Supervisors and District Rangers, FWS Project Leaders, and NOAA Fisheries Branch Chiefs is essential to successful implementation of these procedures. We direct you to take full advantage of streamlining opportunities to accomplish both our individual agency responsibilities and our shared mission as stated above.

BACKGROUND

In 1995, the Regional Executives agreed to adopt streamlined consultation procedures to implement Section 7 of the Endangered Species Act. Since then, these procedures have been used successfully for numerous programmatic and project-specific consultations. Based on our experiences in implementing these procedures, they were formally revised in 1997 and 1999 to further refine and clarify their application, and to improve their effectiveness. See the *Streamlined Consultation Procedures for Section 7 of the Endangered Species Act – July 27, 1999* posted on the interagency ESA website.

While the streamlined consultation procedures have been successful, there are opportunities for improvement. Some field units, in conjunction with their Level 1 and Level 2 teams, have expedited the process very successfully and are to be commended. However, others are still having difficulties and complications with on-the-ground application of some of the procedures. Based upon our experiences to date, the key to success is the development of effective and efficient Level 1 and 2 teams that are able to deal with issues and opportunities presented to the teams. It is also imperative that these teams know how and when to elevate issues to the “next level” without undue loss of time and/or damage to team dynamics.

Since the streamlined consultation procedures were issued, we have asked interagency teams to review and critique various aspects of the process. In April 2000, we established an interagency team to address technical and policy issues identified by field staff and to review the FWS and NOAA Fisheries *Matrices of Pathways and Indicators* documents (posted on the NOAA website at www.nwr.noaa.gov/1habcon/habweb/habpub.htm). The resulting recommendations of this team were included in the development of this memorandum. In 2001, we assigned three additional tasks to the RTT in Oregon and Washington to: 1) identify what was and was not working in the streamlining process; 2) complete a workload/staffing analysis; and 3) review completed Biological Assessments. A summary of the findings for these tasks has been documented in the action items contained in *Improving the Effectiveness of Endangered Species Act (ESA) Implementation (ICS Memo #1) – January 24, 2003* (attached) and in the *List of Common Execution Problems – ESA Section 7 Consultation Streamlining Process – July 26, 2002* (attached). Please take the time to become familiar with these documents.

REGIONAL EXECUTIVES' COMMITMENTS AND EXPECTATIONS

To help ensure the success of the streamlined consultation process, we have committed to meet at least three times each year to address policy and operational issues. We will focus on providing policy leadership and promoting performance accountability. Our success will rely on managers, as well as the Level 1 and 2 teams, to provide us with timely feedback and insight that helps identify issues and concerns.

Streamlined consultation procedures will continue to evolve, as we gain additional experience and understanding of these procedures. We fully expect field managers and supervisors to work diligently to quickly resolve any issues or concerns affecting Level 1 and 2 teams. In some locations genuine support from management staff has resulted in significant Section 7 consultation process efficiencies. This management support has also fostered interagency rapport and created working environments that have contributed to achievement of our shared vision. Thus, we expect agency managers to use their talents to ensure streamlining is successful in your geographic area. We need to build on our successes as well as consider other consultation innovations that help us further our shared mission.

Our expectations for field managers and supervisors, as well as ourselves, include:

Strong and Continuing Management Commitment

We all need to personally deliver a strong message of support for, commitment to, and confidence in the streamlined consultation process to Level 1 and Level 2 team members as well as other staff specialists.

Team Processes

We expect agency managers to monitor the function and progress of Level 1 and Level 2 teams, and to work closely with their interagency counterparts to address specific issues affecting the function and/or progress of these teams.

- Level 1 teams should assign a team lead in accordance with the streamlining consultation procedures (See Page II-B-1 Q&A #1: *July 27, 1999 Streamlined Consultation Procedures...*). Team leads (and team members) should have the following expertise: streamlining experience, good team building experience and skills, and good collaborative and facilitation skills. The team lead will be responsible for the development of Level 1 team meeting notes and for the distribution of those notes to other team members and the Level 2 team.
- Good documentation and facilitation of Level 1 team meetings has proven to result in efficiencies. Level 2 teams should ensure that appropriate administrative support (note taker and facilitator) is available to perform this function (See Page II-B-1 Q&A #1: *July 27, 1999 Streamlined Consultation Procedures ...*). Level 1 and 2 teams are also encouraged to develop operating guidelines for their respective teams in order to foster

ownership from each participating agency. These operating guidelines should be reviewed and updated when changes occur in team membership, and should be periodically reviewed and shared with agency decision-makers.

- Level 2 teams should consider assigning a management liaison position to each Level 1 team. This can be a Level 2 team member or a line officer or supervisor. The role of the management liaison will be to work in concert with the team lead and to help facilitate, understanding and communication between the Level 1 and Level 2 teams. The management liaison is an observer of team dynamics and performance and is a resource to the team lead to help resolve Level 1 team issues (See Page II-A-1 Q&A #2 and Page II-B-2 Q&A #3: *July 27, 1999 Streamlined Consultation Procedures ...*).
- The Level 1 team lead and management liaison (where they exist) should alert the Level 2 team when prescribed timelines for development of Biological Assessments (BAs), Letters of Concurrence (LOC's), and Biological Opinions (BO's) are not being met for the following reasons: (1) consensus on effects or BA adequacy cannot be reached in a reasonable timeframe; (2) insufficient staffing or high turnover is delaying team progress and timelines; (3) teams are struggling with issues outside the scope of the proposed action or are redefining the proposed action analyzed in the National Environmental Policy Act (NEPA) document and described in the BA; (4) insufficient time has been allotted to produce a technically sound, legally defensible consultation document, within prescribed timelines; or (5) ineffective team dynamics and behaviors are resulting in unnecessary delays (See Page I-3 and 4, Page II-A-1 Q&A #2, and Page II-B-2 Q&A #3: *July 27, 1999 Streamlined Consultation Procedures ...*).
- The 30 and 60-day informal and formal consultation timeframes are considered deadlines, not guidance (See Page I-5 and Page II-C-1 Q&A #1: *July 27, 1999 Streamlined Consultation Procedures ...*)¹.

Preparing Status Reports and Annual Assessments of Consultation Efforts

Assessing progress and sharing performance information is critical to maintaining and improving the streamlined consultation process.

- As noted above, the Level 1 team lead and the management liaison (where they exist) are expected to provide an update to the Level 2 team on the status of Level 1 team performance three times a year to coincide with the Regional Executive meetings.
- Level 1 and 2 teams are expected to jointly complete an annual interagency assessment of their performance with support from the RTT, ICS, and others. Utilize Attachment 3 of the *July 27, 199 Streamlined Consultation Procedures ...* for annual reporting and evaluation, which will be submitted to Level 2 teams and the designated RTT contact by October 15th

¹ Due to staff limitations, the FWS in Montana is not able to implement the consultation direction outlined in the streamlining guidance. As a result, the Forests and BLM Districts in Montana will confer with the FWS in accordance with 50 CFR 402.10.

of each year. Level 2 teams will be responsible for completion of this evaluation (See Page II-B-2 Q&A #3: *July 27, 1999 Streamlined Consultation Procedures ...*).

Establishing a Strong NEPA Foundation

The FS and BLM should invite FWS and NOAA Fisheries biologists to participate in the early planning phases, especially for high priority projects, projects with short timelines, and those where controversy would be reasonably expected. Early and continued involvement by FWS and NOAA Fisheries personnel in the Planning (NEPA/Interdisciplinary Team) process will facilitate project development and understanding between ID teams, decision-makers, and the Level 1 teams (See Page I-2 and Page II-E-1 Q&A #1: *July 27, 1999 Streamlined Consultation Procedures ...*).

- Action agencies must ensure projects are fully described and their effects are identified and appropriately analyzed by Interdisciplinary Teams as part of the NEPA process. A standardized format should be considered where appropriate. It is essential that the project description and analysis of project effects be closely coordinated with FWS and NOAA Fisheries staff. The BA should be developed from the description of the proposed action and the effects analysis contained in the NEPA document where they have been closely coordinated with FWS and NOAA Fisheries Level 1 staff.
- The consulting agencies should be involved early in project planning to ensure that the NEPA analysis includes a clear rationale for the effects determination and that the BA documentation is adequate. This involvement should be based on project complexity and scope, potential project effects on listed species and designated critical habitat, and the need for input into project design and identification of effects.
- Level 1 teams should not be redesigning projects outside the scope of the original project proposal. Early involvement (as outlined above), can go a long way to preclude this conflict. It should be noted that Level 1 teams do have a role as a “recommending body” to suggest modifications to a preferred alternative, if and when they see opportunities to minimize impacts to listed species and their habitat, while staying within the purpose and need, and scope of the original project. However, it should also be noted that any final decisions with respect to modification of the preferred alternative is the role of the Interdisciplinary Team, under the direction of the responsible deciding official.

In summary, the *July 27, 1999 Streamlined Consultation Procedures ...* (Page II-E-1 Q&A #1, paragraph 4) indicate “...recommendations for modifications of the preferred alternative from the Level 1 team to the responsible official (such as the FS District Ranger or BLM Field Manager) should be limited to or restricted to correcting inconsistencies or identifying ways to minimize impacts to listed or proposed species and critical habitat considered in the consultation.”

Consensus-based Consultation

The streamlined consultation process is a consensus-based activity that results in legally sufficient consultations which are completed in an expedited timeframe (See Page II-A-1 Q&A #1: *July 27, 1999 Streamlined Consultation Procedures ...*). However, consensus should not be allowed to become more important than the actual goal of a completed BA or consultation process. Successful implementation of streamlining depends on the interpersonal and professional skills of team members at all levels as well as a solid grounding in the streamlining procedures. We expect managers and supervisors to:

- Review existing team composition to ensure that team members demonstrate positive interpersonal skills and collaborative attitudes, to provide opportunities for these individuals to develop and refine these skills, and to rotate staff as necessary to bring fresh perspectives to teams;
- Reinforce the expectation for and commitment of each team member to a collaborative, balanced process that provides for both project review and implementation while meeting species and habitat conservation objectives;
- Communicate to Level 1 teams that consensus does not necessarily mean that each member will be completely satisfied with a document or determination, but it does mean that each team member can agree that the document or determination is sufficient to allow the consultation process to be completed (BA finalized and consultation document issued); and
- Support and participate in streamlining training sessions and workshops along with their team members.

The Elevation Process

The elevation process is another key component to the streamlined consultation procedures. Level 1 and 2 teams should not hesitate to utilize this process when issues cannot be resolved or answers to policy questions are unclear.

- Level 1 teams should immediately elevate consultation issues to their Level 2 teams for resolution when consensus cannot be reached within identified timelines. Level 2 teams should expeditiously address elevated issues (within two weeks, II-G-2), including technical as well as personnel and other team performance concerns (See Page I-3, Page II-A-1 Q&A #2, Page II-B-2 Q&A #3, and Page II-G-1 Q&A #1: *July 27, 1999 Streamlined Consultation Procedures ...*).
- We do not view elevations as a failure, but as an important signal that the streamlining process is working to resolve difficult issues (same citation as the bullet above).

Informal Process (See Page II-A-2 Q&A #4, and Page II-G-2 Q&A #2: *July 27, 1999 Streamlined Consultation Procedures ...*):

It is important to make use of the informal process to the extent practical before formally elevating issues. These resources have been under-utilized in the past. The streamlining process relies on Level 1 teams to informally interact and have dialogue with Level 2 teams, the RTT, IC's, and the ICS and to rely on these various entities for expertise, guidance, and advice.

- Level 1 and 2 teams should utilize the RTT, IC's, the ICS, Interagency Implementation Team (IIT), National Riparian Service Team, and other outside groups and experts to help resolve field implementation issues, technical questions, process problems, and policy issues or interpretation of existing streamlining guidance in a timely manner.

Formal Elevation (See Page II-A-2 O&A #4 and Page II-G-2 O&A #2: July 27, 1999 Streamlined Consultation Procedures ...):

Level 2 Teams should strive to reach resolution of elevated issues. If resolution cannot be reached use the following process:

- The Level 2 team or member should elevate the issue through a letter to the Regional Executives with a "cc" to the ICS chair describing the consultation issues to be resolved.
- The Regional Executives will assign responsibility to the ICS to work with the Level 2 Team, RTT, and others to address the elevated consultation issues. Issues elevated to the ICS should be in a form that accurately captures the issue(s), and actions taken by Level 2 to resolve the issue(s).
- The ICS will make recommendations for resolution of issues or further elevation to the Regional Executives. The Regional Executives will make an interagency decision. The ICS will communicate decisions and instructions to the involved Level 1 and 2 teams on how to proceed. The outcome of elevated issues will be documented and distributed to appropriate BLM, FS, FWS and NOAA Fisheries staff (See Page II-G-2 of the Streamlined Consultation Procedures).
- If a consultation issue cannot be resolved at the Regional Executive level, it will be elevated to the National Dispute Resolution Panel.

In closing, both individually and collectively, we sincerely believe that the streamlined consultation procedures have greatly contributed to our ability to effectively carry out our agency responsibilities and our shared mission. We will continue to support you and your efforts to effectively implement and improve these procedures.

/s/ Jack G. Troyer

JACK G. TROYER
Regional Forester, Region 4
USDA Forest Service

/s/ Linda D. Goodman

LINDA D. GOODMAN
Regional Forester, Region 6
USDA Forest Service

/s/ Bradley E. Powell

BRADLEY E. POWELL
Regional Forester, Region 1
USDA Forest Service

/s/ D. Robert Lohn

D. ROBERT LOHN
Regional Administrator, Northwest
USDC National Oceanic and
Atmospheric Administration Fisheries

/s/ Elaine M. Brong

ELAINE M. BRONG
State Director, OR/WA
USDI Bureau of Land Management

/s/ K. Lynn Bennett

K LYNN BENNETT
State Director, ID
USDI Bureau of Land Management

/s/ David J. Wesley

(for)
DAVID B. ALLEN
Regional Director, Region 1
USDI Fish and Wildlife Service

Attachments:

*Improving the Effectiveness of Endangered Species Act (ESA) Implementation (ICS Memo #1) –
dated January 24, 2003 (w/o attachment).*

*List of Common Execution Problems – ESA Section 7 Consultation Streamlining Process – July
26, 2002.*

cc:

Interagency Coordination Subgroup
Regional Technical Team
Interagency Implementation Team
National Riparian Service Team
Judy Nelson, BLM, OR/WA
Mike Crouse, NOAA Fisheries – Portland
Rowan Gould, FWS, Region 1
Susan Giannettino, BLM, ID
Kathy McAllister, FS, Region 1

United States Department of Agriculture Forest Service	United States Department of Commerce National Marine Fisheries Service	United States Department of Interior Bureau of Land Management	United States Department of Interior Fish and Wildlife Service
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Reply to: 2670(FS)/6840(BLM-OR931)

Date: January 24, 2003

FS/NMFS/BLM/FWS-Memorandum

To: Bill LeVere, Forest Service (FS), Region 4
Russ Strach, National Marine Fisheries Service (NMFS) – Portland
Neal Middlebrook, Bureau of Land Management (BLM), OR/WA
Cal Joyner, Forest Service (FS), Region 6
Jon Foster, Bureau of Land Management (BLM), ID
Kemper McMaster, Fish & Wildlife Service (FWS) – Oregon

Subject: Improving the Effectiveness of Endangered Species Act (ESA) Implementation
(ICS Memo #1)

At our August 20 meeting we agreed to several action items to improve the effectiveness of ESA implementation. These action items fall under four main areas: improving consultation efficiency and effectiveness; organizing for success; providing policy leadership; and promoting performance accountability.

The intent of this letter is to transmit the various action items, communicate our expectations, and to follow-up on the first task that we assigned to ourselves – establishment of an Interagency Coordinators Subgroup (ICS). The role of this committee (made up of a sub-group of the Interagency Coordinators – outlined in the July 27, 1999 Streamlined Consultation Procedures) is to work with the various Section 7 consultation teams and Regional Executives as outlined in the attachment (below).

Background

Section 7(a)2 of the ESA requires that federal agencies shall insure that any actions they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. The Federal Agencies in the Northwest (that area covered by the Northwest Forest Plan, PACFISH/INFISH, [excluding California], Bulltrout, and related Biological Opinions) have a common vision of this responsibility and how the processes can be integrated to more effectively accomplish this work. Significant progress in efficiency has been realized through interagency streamlining processes but the collective vision of the Federal Agencies is that significant improvements in timeliness and quality can be achieved through the implementation of the following action items (identified below).

January 24, 2003

Interagency Coordinators Subgroup

The primary purpose of the Interagency Coordinators Subgroup (ICS) is to be a focal point for oversight and timely resolution of issues with regard to implementation of streamlined consultation procedures. The role of the ICS is to function as key policy advisors on the consultation procedures to the Regional Executives and Level 2 Teams. The ICS will be composed of the following individuals:

- | | |
|-------------------------|-----------------|
| Bill LeVere, Chair | FS, Region 4 |
| Russ Strach, Vice Chair | NMFS, Northwest |
| Neal Middlebrook | BLM, OR/WA |
| Cal Joyner | FS, Region 6 |
| Jon Foster | BLM, ID |
| Kemper McMaster | FWS, Oregon |

As part of its first order of business, the ICS should determine the length of time each person will serve as chair and vice-chair and who rotates into each position over time. The ICS will be expected to report out to the Regional Executives at our next meeting.

The ICS should consider the various action items identified by the Regional Executives as their charter/program of work for the upcoming year. The following tables display the individual action items:

Improving Consultation Efficiency and Effectiveness:

Action	Lead	Timeframe
Reissue Streamlined Consultation Procedures – updated to include guidance on common execution problems. Regional executives will jointly transmit.	Interagency Coordinators Subgroup (ICS).	02/21/03
Provide interagency refresher training in application of streamlined consultation procedures.	Regional Technical Team (RTT), with oversight by the ICS.	To be determined by the ICS.

Improving the Effectiveness of Endangered Species Act (ESA) Implementation (ICS Memo #1)
January 24, 2003

Organizing for Success:

Action	Lead	Timeframe
NMFS to delegate signing authority for Letters of Concurrence to Level 2 representatives. NMFS will continue to pursue delegation of Biological Opinions commensurate with level of delegation by FWS.	NMFS to draft for signature by Bob Lohn, with oversight by the ICS.	To be determined by the ICS.
Prepare interagency policy direction encouraging utilization of action agency biologists to Draft Section 7 documents for review and signature of the responsible consulting agencies.	RTT to draft, with oversight by the ICS.	To be determined by the ICS.
Identify full suite of opportunities to assign one consulting agency lead responsibility for consultation in those geographic areas where there are both listed resident and anadromous fish (i.e., "one-stop consultation").	NMFS and FWS, with oversight by the ICS.	To be determined by the ICS.
Establish interagency web site to share outstanding examples of consultation documents and other pertinent information.	FS and BLM (with input from RTT), and oversight by the ICS.	To be determined by the ICS.

Providing Policy Leadership:

Action	Lead	Timeframe
Calendar three meetings per year for agency executives to address outstanding policy and operational issues.	Jack Troyer – working through his executive assistant to calendar a daylong meeting every four months.	Ongoing
Develop a comprehensive list of policy issues that includes those requiring regional or national resolution.	Interagency Coordinating Subgroup.	To be determined by the ICS.

Promoting Performance Accountability:

Action	Lead	Timeframe
Investigate the development of a framework for identifying and tracking the consultation workload.	RTT, with oversight by the ICS.	To be determined by the ICS.
Develop an agreement on how we are going to elevate and address performance accountability issues.	Regional Executives	Next scheduled executive meeting.
Identify interagency streamlining teams that operate effectively and recommend opportunities to acknowledge their success.	ICS	June 2003

If the ICS members have any questions or comments regarding the above, please direct your concerns through ICS Chair, Bill LeVere at (801)-625-5669 or wlevere@fs.fed.us.

/s/ Jack G. Troyer

JACK G. TROYER
Regional Forester, Region 4
USDA Forest Service

/s/ Linda D. Goodman

LINDA D. GOODMAN
Regional Forester, Region 6
USDA Forest Service

/s/ Bradley E. Powell

BRADLEY E. POWELL
Regional Forester, Region 1
USDA Forest Service

Michael R. Crouse
(for)
D. ROBERT LOHN
Regional Administrator, Northwest
USDC National Marine Fisheries Service

/s/ Elaine M. Brong

ELAINE M. BRONG
State Director, OR/WA
USDI Bureau of Land Management

/s/ K. Lynn Bennett

K LYNN BENNETT
State Director, ID
USDI Bureau of Land Management

/s/ Anne Badgley

ANNE BADGLEY
Regional Director, Region 1
USDI Fish and Wildlife Service
Attachment (1)

Improving the Effectiveness of Endangered Species Act (ESA) Implementation (ICS Memo #1)
January 24, 2003

cc:

Regional Technical Team (RTT) Members

Judy Nelson, BLM, OR/WA

Mike Crouse, NMFS – Portland

Rowan Gould, FWS, Region 1

Susan Giannettino, BLM, ID

Kathy McAllister, FS, Region 1

USDA Forest Service Forest Supervisors (Regions 1, 4, & 6)

USDC National Marine Fisheries Service Project Managers (Northwest Region, Habitat ARA
and Branch Chiefs)

USDI Bureau of Land Management District/Field Managers (OR/WA & ID)

USDI Fish and Wildlife Service Field Supervisors (Region 1)

**List of Common Execution Problems
ESA Section 7 Consultation/Streamlining
(July 26, 2002)**

The following is a list summarizing common execution problems that were identified during the interagency review of ESA Section 7 Consultation/Streamlining in 2001/2002.

- I. Time frames specified in the July 1999 Streamlining Procedures and the April 7, 2000, Interagency Memorandum are not consistently being followed and met. These time frames were agreed upon by the Regional Executives through their signature on the transmittal memos and need to be emphasized with Level 1 and 2 staff. These time frames include:
 - a. "Notice" (letter or e-mail) within 2 weeks from the Fish and Wildlife Service/National Marine Fisheries Service (FWS/NMFA) acknowledging receipt of the BA (4/7/2000 Interagency Memo.)
 - b. Request time extensions within 2 weeks if either Service needs more time to complete consultation (4/7/2000 Interagency Memo.)
 - c. Request any additional information needed within 2 weeks of receiving the BA (however, such request should be minimal due to the Level 1 team review and sign-off) (4/7/2000 Interagency Memo.)
 - d. Action agencies will contact FWS/NMFS regarding the disposition of the BA if notice is not received within 2 weeks (4/7/2000 Interagency Memo.)
 - e. The clock relative to consultation streamlining deadlines begins to run as of the date of the BA, as approved by the Level 1 team, is formally received by FWS/NMFS (as described above.)
 - f. For formal consultation, FWS/NMFS will send a concurrence letter within 30 days of receipt of a completed BA (page I-5, 7/99 Procedures.)
 - g. The regulatory agency will prepare a BA/Conference Opinion within 60 days of receipt of a complete BA (pages II-C-1, 7/99 Procedures.)
 - h. The 30- and 60-day time frames are considered to be **deadlines**, not guidance (page II-C-1, 7/99 Procedures.)
 - i. In very limited and specific situations (for example, complex actions such as those involving mining or water diversions,) a 60-day turnaround for the BO may be exceeded. Prior to submitting the BA, the Level 1 and 2 teams must identify the need and concur on the extension of the BO response time frame (page II-C, 7/99 Procedures.)
2. Efficiency in the function of Level 1 teams has been compromised:
 - a. High turnover in staffing, which undermines team ability to reach consensus on determinations and agreement on BA adequacy, which delays the process for providing the Letter of Concurrence (LOC) or BO.
 - b. Inadequate FWS/NMFS staffing for timely review and processing of LOCs and BOs, and participation early in project design and development.
3. Level 2 teams are not providing oversight and guidance to Level 1 teams, as described in the streamlining procedures, or conducting annual assessments of workload and priorities.
4. Implementation of the issue elevation process is not understood by Level 1 and 2 teams or, if used, does not follow the process as described or envisioned in the streamlining guidance.
5. The Interagency Coordinators need to play a greater role in streamlining consultation coordination and leadership, and engaging the Agency Executives in ongoing issues.