

In Reply Refer To:  
FWS/AES/DCC 018082

Memorandum

To: Regional Director, Regions 1, 2, 3, 4, 5, 6 and 7  
Manager, California and Nevada Operations

From: Director

Subject: Modified Legal Review and Clearance Procedure for Rule-making  
Documents Prepared Under Section 4 of the Endangered Species Act  
(ESA)

On April 20, 2004, the Associate Solicitor for Parks and Wildlife issued a memorandum outlining the procedure by which the Solicitor's Office will review and surname rule-makings, notices, and findings made under section 4 of the Act. While this memorandum specifically identifies listing and critical habitat rule-making documents, delisting rule-making documents should also follow these procedures. Applicable listing and delisting documents are as follows: petition findings (90-day and 12-month), proposed and final listing, delisting, and reclassification rules, 4(d) rules, proposed and final critical habitat designations, notices of availability, economic analyses for critical habitat designations, and any related National Environmental Policy Act documents. In addition, this process will also apply to rules establishing experimental populations under section 10(j).

To ensure timely coordination of Regional Solicitor review, appropriate incorporation of Regional Solicitor comments, and maintenance of the administrative record, the Service will adopt the procedures described below at the various levels of section 4 and 10(j) package development.

Field Office

The Field Office is responsible for developing the analysis and *Federal Register* package for findings, rules, and notices. The Field Office is also responsible for assisting the Regional Office and Washington Office in responding to Solicitor comments. Thus, the Field Office is encouraged to consult early with the Regional Solicitor on the legal sufficiency of their analysis and documentation. The April 20, 2004, memorandum also encourages such informal review.

## Regional Office/California Nevada Operations Office

The Regional Office is responsible for reviewing the *Federal Register* package for, among other things, consistency with policy and legal parameters. The April 20, 2004, memo describes a process, beyond informal review, by which the Regional Solicitor will provide a Preliminary Review of the *Federal Register* package. This review is triggered by the completion of the Regional TE Chief's review. All Regional Offices must submit a copy of the *Federal Register* document no later than the completion of the Regional Endangered Species Chief's review to the Regional Solicitor for a preliminary review. The Regional Solicitor will complete a memorandum of the "Summary Results of Legal Review of Draft Section 4 (ESA) Documents" at this time. This memorandum of the "Summary Results of Legal Review of Draft Section 4 (ESA) Documents" is to be inserted into the Federal Register package. The Regional Office will make every effort to answer the Regional Solicitor's comments in the preliminary review. The Regional Offices are also encouraged to informally confer with their Regional Solicitor prior to preliminary review.

If a Region is already implementing a procedure with their Regional Solicitor to complete the solicitor review prior to the package arriving in the Washington Office, then those Regions should continue their particular practice. Likewise, any Region may step down this process to accommodate the particular relationships and practices in obtaining solicitor review provided that the timelines do not exceed what is outlined herein.

## Washington Office

The Washington Office is responsible for continued review for consistency with policy and publishing parameters, as well as finalizing approvals and delivering to the *Federal Register*. Within the Washington Office, two different Branch Chiefs complete the review of section 4 rulemaking documents depending on the nature of the document, the Listing Branch Chief or the Recovery and Delisting Branch Chief.

The April 20, 2004, memorandum states that upon completion of the appropriate Washington Office Branch Chief's review, the Regional Solicitor will complete their formal review. Furnishing the Regional Solicitor a copy of document as surnamed by the appropriate Branch Chief triggers this. At this time, the Regional Solicitor may revise their memorandum according to this new draft of the document. The revised Regional Solicitor memorandum of the "Summary Results of Legal Review of Draft Section 4 (ESA) Documents" will be attached to the *Federal Register* package and forwarded to the Assistant Director for Endangered Species. Any significant changes made to the *Federal Register* document after formal review will be shared with the Regional and Washington Solicitor. The Service's Washington Office will make every effort to address outstanding Regional Solicitor comments.

If you have any questions regarding this procedure or the April 20, 2004, memorandum, please contact Marjorie Nelson, Chief, Branch of Listing or Michelle Morgan, Chief, Branch of Recovery and Delisting at 703-358-2171.

#### Attachment

cc: 3238-MIB-FWS Directorate RF  
3242-MIB-FWS/AES RF (2)  
420-ARLSQ-FWS/TE (Marj Nelson)  
420-ARLSQ-FWS/TE (Michelle Morgan)  
420-ARLSQ-FWS/TE RF  
6530-MIB-SOL (Attn: Mike Young)

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Revised:MMorgan:jma:8/19/04

Revised:PLeonard:jma:8/25/04