

**Memorandum of Agreement  
on Section 7 Programmatic Consultations and Coordination  
Among  
the Fish and Wildlife Service, Forest Service,  
Bureau of Land Management, and National Marine Fisheries Service**

**Executive Summary**

October 10, 2000

**Background:**

In 1994, the 9<sup>th</sup> Circuit Court of Appeals ruled in *Pacific Rivers Council vs. Thomas*, that Forest Service Land and Resource Management Plans "constitute continuing agency action requiring consultation under 7(a)(2) of the Endangered Species Act." As it had not been common practice to consult on LRMPs or BLM's Land Management Plans prior to the Court's ruling, the decision signified a substantial new workload for both action agencies (BLM, FS) and the consulting agencies (FWS, NMFS). The four agencies determined that a process was needed in order to better facilitate the increased programmatic consultation workload in a constructive and timely manner. The MOA went into effect on August 30, 2000.

**Purpose:**

- To establish a general framework for a "streamlined" (i.e., easier and more effective) process for interagency cooperation among the agencies in the exercise of their responsibilities under the Endangered Species Act.
- To provide guidance and procedures for section 7 consultations as well as consideration of candidate species in land management plans and other programmatic level proposals prepared by the BLM and FS.
- To allow the agencies to better achieve compliance with the ESA without altering or diminishing the agencies' existing responsibilities

**Goals:**

- To improve efficiency and effectiveness of plan and programmatic level section 7 consultation processes
- Enhance conservation of imperiled species while delivering appropriate goods and services provided by signatory agencies

### **Procedural Guidance:**

- The agencies agree to use the streamlining guidance when implementing this MOA
- If the agencies may find it necessary or advisable to alter the procedures described in the attachment, a revised procedural guidance may be issued
- Nothing in this MOA constrains the obligations of the agencies in carrying out their authorities under applicable laws
- This MOA is effective immediately, and will remain in effect until amended, superseded, or revoked

### **Agency Agreements:**

The agencies agree to promote the conservation of candidate, proposed, and listed species and affirm that planning for conservation of these species is key to the accomplishment of the federal land stewardship role.

During the planning processes, the agencies will: (1) consult or confer on listed and proposed species, and designated and proposed critical habitat to assure activities minimize or avoid adverse impacts to such species and any critical habitat and do not preclude future conservation opportunities; (2) use, where possible, formal conference procedures to avoid conflicts between plans and conservation of proposed species and proposed critical habitat; (3) analyze the effects of plans on candidate species pursuant to agency planning regulations and use conservation recommendations for candidates in the development of alternatives during the NEPA process or programmatic level consultations.

The agencies also agree to maintain and exchange information on the biology, ecology, distribution, and abundance of threatened, endangered, proposed, and candidate species and proposed and designated critical habitat, and planning schedules, status, and priorities for the land management activities.

### **Consultation Guidance:**

The agencies will informally and/or formally consult and confer on: (1) land management plans, both during development of a new, amended, or revised plans; (2) existing plans if a new species is listed or critical habitat designated, or significant new information becomes available; and, (3) other programmatic level proposals, as appropriate.

### **MOA Implementation Guidance:**

To insure successful implementation of the streamlined process, the agencies will: (1) introduce the process through interagency workshops; (2) develop consultation agreements to address specific consultation streamlining needs; (3) initiate early coordination between the land management and consulting agencies; (4) establish a dispute resolution process, and, (5) establish procedures to evaluate and refine the process.

The MOA outlines 3 phases to the streamlined process. Phase 1 includes interagency participation in early planning, program guidance meetings, and the review of preliminary determinations of effect (early coordination). Phase 2 involves preparation of biological assessments (BAs) or biological evaluations (BEs) by the action agencies, and phase 3 includes the preparation of biological opinions (BOs) or concurrence letters by the consulting agencies.

### **Consultation Agreements:**

Interagency consultation agreements will be developed and applied to accomplish the objectives of the MOA that determine the scope of the planned action, the appropriate level of signature authority, and scale of analysis; designate staff and responsibilities; determine the necessary time frames; initiate early interagency staff coordination; and establish a dispute resolution process.

### **Early Coordination:**

Early interagency coordination is the key to the streamlining consultation process, and is intended to allow resource managers to make appropriate adjustments in proposed activities during the design phase, enable proposed plans/programmatic activities to incorporate species habitat needs, and facilitate and expedite the consultation process.

### **Working groups:**

Streamlining is facilitated through the establishment of working groups.

Program Level Working Groups - responsible for coordinating and overseeing effects determinations, ensuring that the best available scientific and commercial information is considered in the decision making process, identifying proposed actions that may adversely affect species and critical habitat, providing input to the design of proposed plans/programmatic activities to incorporate species habitat needs, screening ongoing activities to ensure alternatives to avoid jeopardy are not foreclosed, and facilitating achievement of ESA compliance in the shortest time possible.

Local Issue Resolution Working Groups - the first level dispute resolution. They provide early guidance on priorities, expectations, and policy as well as support for staffing, and work out coordination issues to help gain efficient use of program level working groups.

Regional/State Issue Resolution Working Groups - the second level of dispute resolution. They meet on an ad hoc basis to resolve issues elevated from the Local Issue Resolution Working Groups.

Regional/State Technical Support Groups - provide technical support to the other working groups and are responsible for overall technical oversight during the consultation process.

National Issue Resolution Working Groups - responsible for resolution of issues elevated by the Regional/State Issue Resolution Working Group.

**Dispute Resolution Process:**

The working group process is designed to ensure disagreements are resolved in a timely manner. Unresolved issues are to be elevated in writing to the appropriate working group for consideration. Each stage of the issue resolution process will not exceed 15 days.

**Timelines:**

Once the agencies agree on the BA/BE, informal consultation will be completed within 30 days and formal consultation within 90 days. As appropriate, individual units may establish alternative timelines by mutual consent.

**Tracking Implementation:**

Measures will be implemented to track the progress of the process and to propose refinements necessary to further the goals of the MOA.

**August 30, 2000**

**MEMORANDUM OF AGREEMENT**

**ENDANGERED SPECIES ACT**  
**SECTION 7 PROGRAMMATIC CONSULTATIONS**  
**AND COORDINATION**

**among**

**BUREAU OF LAND MANAGEMENT,**  
**FOREST SERVICE,**  
**NATIONAL MARINE FISHERIES SERVICE**

**and**

**FISH AND WILDLIFE SERVICE**

**Goal**

The goal of the Memorandum of Agreement (MOA) is to improve the efficiency and effectiveness of plan and programmatic level section 7 consultation processes under the Endangered Species Act, and enhance conservation of imperiled species while delivering appropriate goods and services provided by lands and resources managed by the signatory agencies.

**Purpose**

The purpose of this interagency Memorandum of Agreement (MOA) is to establish a general framework for a "streamlined" (i.e., easier and more effective) process for interagency cooperation among the Bureau of Land Management (BLM), U.S. Forest Service (FS), U.S. Fish and Wildlife Service (FWS), and National Marine Fisheries Service (NMFS) in the exercise of their responsibilities under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531-1544) and the 1994 Memorandum of Understanding on the conservation of species which are tending towards federal listing (94-SMU-058), which all four agencies signed. In particular, this MOA outlines guidance and procedures for section 7 consultations as well as consideration of candidate species conservation in land management plans and other programmatic level proposals prepared by the BLM and FS. The guidance and procedures outlined in this MOA will enhance existing procedures for conducting section 7 consultations. Nothing in this MOA is intended to amend 50 CFR part 402. This streamlined process will provide a number of efficiencies, allowing the agencies to better achieve compliance with the ESA and the regulations at 50 CFR part 402 without altering or diminishing the agencies' existing responsibilities under

the ESA or its regulations. Although consultation already occurs on land management plans and site-specific land management activities, guidance is needed to ensure consistency and efficiency. The result will be increased up-front coordination on biological assessments including conservation measures for candidate, proposed, and listed species and proposed and designated critical habitat. It will also result in a shortened time frame for the appropriate consultation response (a goal of 30 days or less for concurrence letters and 90 days or less to complete formal consultation) once an agreed to biological assessment has been received by the FWS or NMFS. This agreement in no way alters the commitment of the action agencies to consult at the site-specific level.

The term "action" as used in section 7 of the ESA includes land use plans under the Federal Land Policy and Management Act (43 U.S.C. 1701 *et seq.*) and resource management plans under the Forest and Rangeland Renewable Resources Planning Act (16 U.S.C. 1600 *et seq.*) as amended by the Forest Management Act (16 U.S.C. 1600 *et seq.*).

The BLM and FS (action agencies) will consult and confer, as outlined in the following sections, on land management plans, both during development of a new, amended, or revised plan, and on an existing plan if a new species is listed or critical habitat designated, or significant new information becomes available, and, where appropriate, consult on other programmatic level proposals (e.g., recreation program, grazing program, riparian strategy), habitat management plans, multi-year projects aggregated as a program, grouped permits or activities, or plan objectives, standards and guidelines, such as the Pacific Anadromous Fish Strategy (PACFISH) interim standards and guidelines. The action agencies also agree to include candidate species in biological assessments/evaluations provided during the plan consultation/conference process.

The BLM, FS, FWS, and NMFS agree to promote the conservation of candidate, proposed, and listed species and to informally and formally consult/confer as specified in 50 CFR 402 on listed and proposed species, and designated and proposed critical habitat during planning: (1) To assure that activities implemented under these plans minimize or avoid adverse impacts to such species and any critical habitat; (2) to assure that such activities implemented under these plans do not preclude future conservation opportunities; (3) to use, where possible, formal conference procedures specified in 50 CFR 402 to avoid conflicts between elements contained in plans and the requirements for conservation of proposed species and proposed critical habitat; and (4) to analyze the effects of the plan on candidate species pursuant to agency planning regulations.

This MOA establishes interagency commitment to and guidance for the following: (1) Early interagency communication, coordination, consultation, and conferencing on candidate, proposed, and listed species to take place prior to and during plan/program proposal development; (2) consultations/conferencing on land management plan adoption, revision, amendment and on ongoing plans where reinitiation is required; (3) implementation guidance for plan and programmatic level consultation; (4) efficiency through a consistent programmatic interagency cooperative consultation process; (5) ensuring that ongoing activities do not jeopardize listed species, result in the destruction/adverse modification of designated critical

habitat, or result in unauthorized take during consultations on an existing land management plan; and (6) consulting or conferencing on both land management plans and other programmatic level proposals for species listed or critical habitat designated since the adoption of a plan.

### **Context of Agreement**

As part of their land management planning processes, the FS prepares Land and Resource Management Plans and the BLM prepares Resource Management Plans and, in the past, has also prepared Management Framework Plans (hereinafter, these plans will be collectively called "plans"). Plans identify general land-use purposes or allocations; future conditions that are desired on specific lands; goals and objectives for resource conditions on specific lands; and standards, guidelines, or other mechanisms that establish the management framework for all the activities conducted and allowed on lands managed by these agencies. Plans are developed over a period of several years and site-specific management actions are developed and carried out to implement the plan.

Because a plan does not normally prescribe the specific timing and location of expected land management activities, there is a significant level of uncertainty associated with the potential environmental consequences of plans. This uncertainty extends to effects on candidate, proposed, endangered and threatened species and designated critical habitat. Although the precise location and timing of site-specific effects of management actions and land uses are not often known when a plan is adopted, amended, or revised, BLM and FS, by signing this MOA, agree to consult with FWS and NMFS so that future activities formulated and allowed under the parameters of the plan are not likely to jeopardize the continued existence of listed species or result in the destruction/adverse modification of designated critical habitat. Additionally, because of the conservation mandate of section 7(a)(1) of the ESA, plans can be very helpful in recovery of listed species. The action agencies, by signing this agreement, affirm that planning for conservation of candidate, proposed, and listed species is key to the accomplishment of the federal land stewardship role. Successful implementation of this MOA will enhance plans and programmatic level proposals by promoting the incorporation of conservation objectives and guidelines for proposed and listed species.

Plans may be operational for a period covering many years, new species may be added to the list of threatened and endangered species, or significant new information may become available, triggering reinitiation of formal consultation and the need for reevaluation of the effects of plan implementation on listed or proposed species, and on designated or proposed critical habitat. This provides an additional impetus to cooperate under this MOA.

Under new FWS guidance issued on December 5, 1996 (61 FR 64481), candidate species are those species for which FWS has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule to list, but issuance of the proposed rule is precluded by higher listing priorities. NMFS also maintains a list of candidate species that are being considered for listing. Since it is highly likely that most candidate species will become

proposed and/or listed during the life span of the plan or program under consultation, it is prudent to receive conservation recommendations for candidates to use in the development of alternatives during the NEPA process or programmatic level consultations. These recommendations for candidate species will facilitate development of objectives, standards and guidelines, or conservation measures at the plan/programmatic level which can help streamline future project level conferences/consultations for these species when they acquire formal protection under the ESA. In some cases this early coordination may avoid the need to list the species.

### **Scope**

The scope of this MOA includes Land and Resource Management Plans prepared by the FS pursuant to the National Forest Management Act of 1976 [16 U.S.C. 1601-1614] and Resource Management Plans and Management Framework Plans prepared by the BLM pursuant to the Federal Land Policy and Management Act of 1976 [43 U.S.C. 1701-1784]. The MOA may also be applied to other programmatic level proposals. These may include, but are not limited to, a recreation or grazing program, riparian restoration strategy, multi-year forest management activities, recovery strategy or other proposals.

Elements of plans that will undergo section 7 consultation/conference pursuant to this MOA include:

1. Management goals, objectives, standards, and guidelines;
2. Designation of special management areas, management area direction and prescriptions, and designation of allowable resource uses;
3. Broad-scale monitoring and evaluation requirements for listed, proposed, and other species of concern; and
4. Site-specific or forest-wide management decisions included in the plan and/or Record of Decision.

### **Consultation Procedures**

Action and consulting agencies agree to maintain and exchange information on (1) the biology, ecology, distribution, and abundance of threatened, endangered, proposed, and candidate species and proposed and designated critical habitat and (2) planning schedules, status, and priorities for the land management activities. Successful implementation of this MOA depends on full cooperation and coordination. The BLM and FS should have access to FWS and NMFS candidate species lists, proposals to list species as threatened or endangered, proposals to designate critical habitat, and recovery planning documents. Regular exchanges of information examining the status, biology, and ecology of listed species and their habitat needs should occur.

Similarly, BLM and FS will coordinate with FWS and/or NMFS on planning schedules and priorities that will require a commitment of FWS and/or NMFS staff resources.

Coordination and consultation early in the planning process will result in the identification of potential impacts to species and critical habitat, allowing resource managers to make appropriate adjustments. This early cooperation will help to ensure that species conservation is achieved with a minimum of adverse impacts on proposed activities. When plans or programs that may affect listed species and/or designated critical habitat involves more than one planning area, it may be more efficient to consult on ecosystem level strategies, species range wide, or species-specific strategies under the jurisdiction of all the agencies rather than on individual plans or site-specific activities. The agencies may agree to address multiple plans as one consultation package.

Action agencies will make a determination of effects through a biological assessment/evaluation of the plan, the adequacy of conservation measures, and the effects of the land-use allocation and management direction on listed, proposed, and, as appropriate, candidate species and proposed or designated critical habitat. This assessment will determine whether consultation is needed, and if needed, whether informal or formal consultation or conference is appropriate.

Action agencies will include appropriate protection and conservation elements for listed, proposed, and candidate species and proposed or designated critical habitat in land use plans, habitat management plans, or in interim standards and guidelines that are consistent with land use plans.

Consideration of these conservation elements will help resource managers improve beneficial effects and avoid and minimize adverse effects at subsequent planning and project levels. Projects that conform to the protection and conservation elements (such as standards and guidelines) developed through programmatic consultation are likely to receive a "not likely to adversely affect" determination and concurrence or, at a minimum, an expedited Biological Opinion from the consulting agency, in the absence of new information that would change the environmental baseline or effects determination, or other changed circumstances.

Action agencies will review all scientific and other information used in the planning process to ensure that it is reliable, credible, and represents the best scientific and commercial data available. Sources of biological data will include, but are not limited to, recovery plans, conservation assessments, conservation strategies, conservation agreements, and scientific documents. This reflects the policy stated in 59 FR 34271 (July 1, 1994).

Action agencies will follow, where appropriate, the conference process for candidate species when standards and guidelines for candidate species conservation are included in programmatic documents. Inclusion of candidate species recognizes that there is tremendous benefit in early coordination between the agencies, saving time, effort and money. If, or when, the species is listed, informal conferencing on candidate species and formal conferencing on proposed species

or on proposed critical habitat accomplishes the following objectives: (1) Identifies plan elements or ongoing activities that, if implemented, could adversely affect species when listed or critical habitat when designated; (2) provides the opportunity to modify the plan elements and/or ongoing activities to remove the adverse effects and thus reduce the likelihood that future activities would be in conflict with the ESA after a species is listed; (3) identifies plan elements that benefit/promote the conservation of proposed or candidate species or proposed critical habitat; and, (4) if done under formal conference procedures, provides a conference opinion for proposed species that can be confirmed as a biological opinion once the species is listed; and (5) identifies measures to help avoid a jeopardy determination.

Following the procedures and measures prescribed by this MOA will promote the conservation of species, and should result in minimizing incidental take of listed species as a result of implementing a planned activity. Incidental take statements must be issued for any action for which such take is anticipated. When sufficient information is available to anticipate the amount or extent of take incidental to plan or program implementation, the provisions of sections 7(b)(4) and 7(o)(2) (exemptions from takings) will apply to consultations conducted on a plan or programmatic level proposal. If incidental take is not anticipated for the activities implementing a plan or programmatic level proposal, an incidental take statement will state that conclusion. Subsequent "tiered" consultations performed on individual project activities, groups of similar projects, or annual programs, where specific effects on species can be determined within the context of a local geographic area, will contain incidental take statements identifying the anticipated amount of incidental take from the site-specific action under consultation.

When action agencies formally consult on existing plans they are required to ensure that any ongoing activities, including site-specific activities, resulting from or consistent with plans, do not result in any irreversible or irretrievable commitment of resources that have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives that could result from the programmatic consultation. This will be accomplished by conducting early and complete agency collaboration, followed by a timely and coordinated consultation process.

Compliance with section 7(d) of the ESA will be assured at the plan level because the agencies agree to conference on a plan as soon as a species is proposed for listing. If the conference opinion adequately addresses plan level effects and the conservation of the species, then the conference opinion should allow for an easy conversion to a biological opinion or concurrence when the species is listed. Absent any change in circumstances, no further consultation would be required. Furthermore, the action agencies will implement a logical and documented process to jointly "screen" site-specific projects prior to reinitiation of plan consultations following a new listing (if conferencing has not been completed). The screening process should identify any projects which could result in an irreversible or irretrievable commitment of resources that might foreclose the formulation or implementation of reasonable and prudent alternatives to avoid jeopardy. These projects will be modified, suspended, or halted during the programmatic consultation. The final determination of section 7(d) compliance will be the action agency's responsibility, but it is expected that close coordination with the consulting agencies will occur.

## **Procedural Guidance**

Attached is implementation guidance for carrying out consultations at the plan and programmatic level. The agencies agree to use this guidance when implementing the terms of this memorandum. From time to time, the agencies may find it necessary or advisable to alter the procedures described in the attachment; if this occurs, a revised procedural guidance reflecting changes agreed to by the agencies may be issued with the approval of the heads of the four agencies.

This MOA and guidance does not supersede or preclude the use of the May 31, 1995, interagency agreement for streamlining section 7 consultation in the Pacific Northwest. Nothing in this MOA constrains the obligations of the agencies in carrying out their authorities under applicable laws. There is no effect on non-federal interests.

## **Authority**

Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544)  
National Forest Management Act of 1976 (16 U.S.C. 1601-1614)  
Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701-1784)  
MOU on the conservation of species that are tending towards federal listing (94-SMU-058),  
January 25, 1994

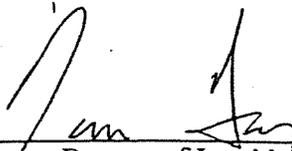
## **Funding and Resources**

Nothing in this MOA shall be construed as obligating any of the parties to the expenditure of funds in excess of appropriations authorized by law. It is understood that the level of resources to be expended under this MOA will be consistent with the level of resources available to the agencies to support such efforts.

## **Effective Date**

This MOA is effective immediately. Its provisions will remain in effect until it is amended, superseded, or revoked, whichever occurs first.

INTERAGENCY MEMORANDUM OF AGREEMENT FOR  
PROGRAMMATIC ENDANGERED SPECIES ACT SECTION 7 CONSULTATIONS

*Don*  
  
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Director, Bureau of Land Management

10/13/99  
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Date

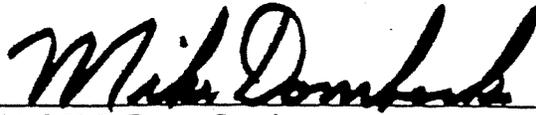
INTERAGENCY MEMORANDUM OF AGREEMENT FOR  
PROGRAMMATIC ENDANGERED SPECIES ACT SECTION 7 CONSULTATIONS

A handwritten signature in black ink, appearing to read "Ken Papp" followed by a stylized flourish.

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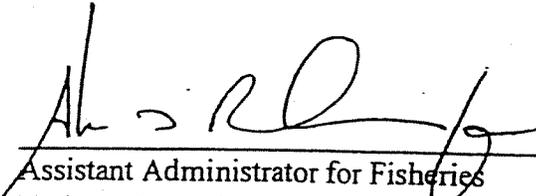
Director, U.S. Fish and Wildlife Service

INTERAGENCY MEMORANDUM OF AGREEMENT FOR  
PROGRAMMATIC ENDANGERED SPECIES ACT SECTION 7 CONSULTATIONS

  
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Chief, U.S. Forest Service

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INTERAGENCY MEMORANDUM OF AGREEMENT FOR  
PROGRAMMATIC ENDANGERED SPECIES ACT SECTION 7 CONSULTATIONS

  
Assistant Administrator for Fisheries  
National Oceanic and Atmospheric Administration

AUG 30 2000