

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

---

Reply to: 6840 (BLM-OR931) / 2670 (FS)

Date: Feb. 26, 1997

FS/NMFS/FWS-Memorandum

BLM-Information Bulletin No. OR-97-

**To:** USDA Forest Service Supervisors (OR/WA, ID, MT, and CA); USDC National Marine Fisheries Service Project Managers (OR/WA, ID, and CA); USDI Bureau of Land Management District Managers (OR/WA, ID, MT, and CA); USDI Fish and Wildlife Service Project Managers (OR/WA, ID, and CA)

**Subject:** Streamlining Consultation Procedures Under Section 7 of the Endangered Species Act - February 1997 Procedure Guidance

Attached is the revision of the August 29, 1995, guidance document for the interagency streamlined consultation procedures that were signed by the Regional Executive in California, Oregon, Washington, and Idaho on May 31, 1995. This updated guidance is the result of input and application by field staff since 1995 and the 12 workshops held in Oregon, Washington, and California in 1996. Workshops are being held this winter in Idaho that may supplement this guidance; a placeholder has been added for amendments from Idaho and western Montana.

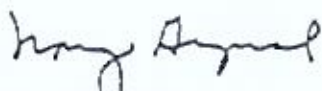
Overall, this guidance continues the intent, process, and direction of the original August 1995 version. Specific changes include updating the team lists, eliminating redundant or out-of-date information, presentation of the guidance in more logical and concise categories, and providing for area or subject-specific guidance. It clarifies major subjects, such as team roles, compliance with existing plans and guidance, elevation of consultation issues, interagency coordination on project design, and the use of programmatic approaches. Extensions beyond the 60-day timeframe for biological opinion responses are allowed under specific and limited situations. The monthly reporting of level 1 teams has been changed to quarterly.

We recognize there are variations in application of this guidance by teams. This flexible and adaptive aspect of the procedures is valid and allows for innovation to enhance its implementation and our ability to address area-specific needs.

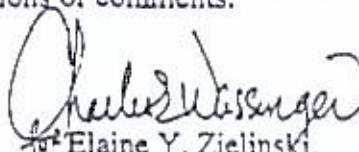
The streamlined consultation procedures have been successful in meeting the 30- and 60-day response times in all but a few consultations since May 1995. Of great significance is the increased interagency cooperation and understanding among our staffs at all levels that has resulted from this proactive and collaborative approach.

This February 1997 guidance will be in effect until further notice. It applies to the Northwest Forest Plan area and much of the Columbia River Basin. The intent is to expand this guidance to the entire area of the Interior Columbia Basin Ecosystem Management Project. As future needs

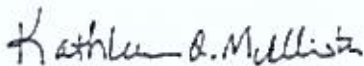
are identified, it will be updated. Please contact your respective Regional Technical Team members or Interagency Coordinators for questions or comments.



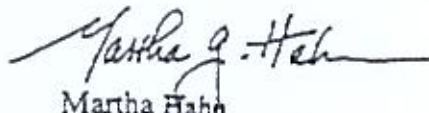
Robert W. Williams  
Regional Forester, Region 6  
USDA Forest Service



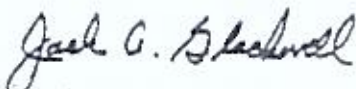
Elaine Y. Zielinski  
State Director, OR/WA  
USDI Bureau of Land Management



Hal Salwasser  
Regional Forester, Region 1  
USDA Forest Service



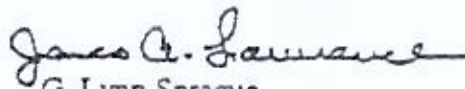
Martha Hahn  
State Director, ID  
USDI Bureau of Land Management



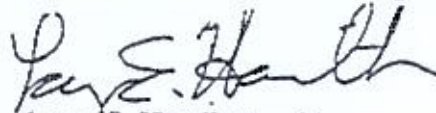
Dale Bosworth  
Regional Forester, Region 4  
USDA Forest Service



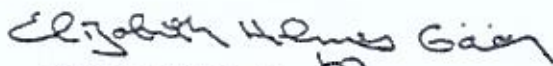
Ed Hastey 1/  
State Director, CA  
USDI Bureau of Land Management



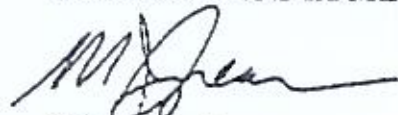
G. Lynn Sprague  
Regional Forester, Region 5  
USDA Forest Service



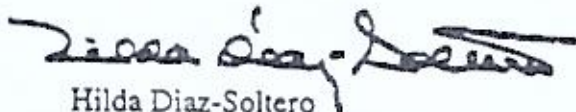
Larry E. Hamilton 2/  
State Director, MT  
USDI Bureau of Land Management



William Stelle, Jr.  
Regional Director, Northwest  
USDC National Marine Fisheries Service



Michael J. Spear  
Regional Director, Region 1  
USDI Fish and Wildlife Service



Hilda Diaz-Soltero  
Regional Director, Southwest  
USDC National Marine Fisheries Service

1/ For public lands managed by BLM in the State of California, this direction will only apply to Section 7 consultations involving forest ecosystem activities.

2/ For public lands managed by BLM in the State of Montana, this direction will apply only to Section 7 consultations involving forest ecosystem activities in the Garnet Resource Area.

1 Attachment

1 - Streamlined Consult. Procedures & Guidance (Jan. 1997)

BLM Distribution

WO-230 (Room 204 LS) - 1

OR-930 - 1

REO (Knowles, Pietrzak) - 2

**Guidance for Streamlining Consultation Procedures  
Under Section 7 of the Endangered Species Act  
-- February 1997 --**

**Table of Contents**

<b>INTRODUCTION</b> .....	<b>1</b>
<b>OVERALL PURPOSE</b> .....	<b>1</b>
<b>PROCESS</b> .....	<b>2</b>
Phase 1 - Early Planning & Determinations of Effect .....	2
Phase 2 - Consultation Package Preparation .....	3
Phase 3 - Preparation of Concurrence Letter or Biological Opinion .....	5
Informal Consultation .....	5
Formal Consultation .....	5
<b>CONCLUSION</b> .....	<b>5</b>

**Q&As - Streamlined Section 7 Consultation**

<b>GENERAL QUESTIONS AND ANSWERS</b> .....	<b>7</b>
Description of the Streamlining "Levels" .....	7
Completion Times for Consultation .....	9
Implementation and Applicability .....	10
National Environmental Policy Act and the Endangered Species Act .....	10
Information Needs and Approaches for Consultation .....	11
Team Operations .....	15
Elevation of Issues .....	16
Reporting on the Streamlined Consultation Process .....	17
Reinitiation of Consultation .....	19
Role of Applicants .....	19
<b>GUIDANCE SPECIFIC TO AREAS COVERED BY THE NORTHWEST</b>	
<b>FOREST PLAN</b> .....	<b>19</b>
Land Allocation Specific Information .....	19
Disturbance and Seasonal Restrictions .....	21
Critical Habitat Issues .....	22
<b>GUIDANCE SPECIFIC TO ANADROMOUS FISH CONSULTATION</b> .....	<b>24</b>
<b>GUIDANCE SPECIFIC TO CONSULTATIONS ON ACCESS</b> .....	<b>24</b>

## ATTACHMENTS

1. May 31, 1995, letter signed by Regional Executives - Streamlining Consultation Procedures Under Section 7 of the ESA
2. January 1997 List of Personnel Assigned to Level 1, Level 2, Regional Technical Teams, and Interagency Coordinators
3. Streamlined Consultation Reporting Form
4. May 16, 1996, Guidelines to Streamline ESA Consultation for Access Across Federal Lands - Addendum to the 5/31/95 Streamlining Consultation Procedures Under Section 7 of ESA

## Acronym List

BA	.....	Biological Assessment
BLM	.....	Bureau of Land Management
BO	.....	Biological Opinion
EPA	.....	Environmental Protection Agency
ESA	.....	Endangered Species Act
FS	.....	Forest Service
FWS	.....	Fish and Wildlife Service
IDT	.....	Interdisciplinary Team
INFISH	.....	Inland Fish Strategy (1995)
LAA	.....	"likely to adversely affect"
LRMP	.....	Land and Resource Management Plan (FS)
LSR	.....	Late-Successional Reserve
NE	.....	"no effect"
NEPA	.....	National Environmental Policy Act
NFP	.....	Northwest Forest Plan
NLAA	.....	"not likely to adversely affect"
NMFS	.....	National Marine Fisheries Service
NSO	.....	Northern spotted owl
PACFISH	.....	Interim Strategy for Managing Anadromous Fish-Producing Watersheds in Eastern OR and WA, ID, and portions of CA (1994)
RMP	.....	Resource Management Plan (BLM)
ROD	.....	Record of Decision

# **Guidance for Streamlining Consultation Procedures Under Section 7 of the Endangered Species Act -- February 1997 --**

## **INTRODUCTION**

Federal agencies have greatly improved the efficiency of the Section 7 consultation process since implementation of the streamlined consultation process begun in 1995. This document is a revision of the August 29, 1995, streamlining consultation guidance that was developed to implement the May 31, 1995, streamlined consultation procedures signed by the Regional Executives of the Forest Service (FS), Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), and the National Marine Fisheries Service (NMFS) (Attachment 1). This new version is to be used by interagency staff to consult on programs or actions until further notice; it will be updated in the future as the need arises. Much of the guidance is similar to that contained in the 1995 version. This revision was based on input from the staff who have applied the process since its implementation.

## **OVERALL PURPOSE**

The overall purpose of the streamlined consultation procedures is similar to that described for early consultation in 50 CFR§402.11: "to reduce the likelihood of conflicts between listed species or critical habitat and proposed actions."

The regulatory and action agencies can assume that most proposed actions will not jeopardize listed species if these actions are consistent with the guidance that has undergone Section 7 consultation such as the Northwest Forest Plan (NFP), PACFISH, INFISH, Land and Resource Management Plans (LRMPs), or the other applicable management strategies. Consistency with these standards and guidelines and their respective biological opinions (BOs) is the foundation upon which this streamlined process is based.

The intent of streamlined consultation procedures and guidance in this scenario is two fold:

1. To further the conservation of listed and proposed species by utilizing applicable plans and guidance to design projects that avoid or minimize adverse effects and reduce levels of incidental take; and
2. To enable the Section 7 review process to proceed as quickly and efficiently as possible.

## PROCESS

The streamlined consultation process involves three basic steps or phases:

**Phase 1** - Interagency participation in early planning, project design meetings, and the review of preliminary determinations of effect.

**Phase 2** - Preparation of final biological assessments (BAs) by the action agencies.

**Phase 3** - Preparation of BOs or concurrence letters by the regulatory agencies.

### **Phase 1 - Early Planning and Determinations of Effect**

Level 1 teams are an interagency group of field staff with a variety of expertise and agency responsibility. The team will communicate regularly; and they will meet as needed to review project plans, BAs, and draft BOs. The Level 1 teams will also meet on an ad hoc basis if needed for urgent or unforeseen high priority projects.

The objectives of the Level 1 early planning efforts are to:

1. Review or participate in project design which may occur over the next year or multiple years. As described above, **all projects proposed by the action agencies and brought to the Level 1 team for Section 7 consultation will be consistent with the appropriate management plans** (e.g., NFP, PACFISH, INFISH, existing FS LRMPs or BLM Resource Management Plans (RMPs) and earlier programmatic consultations, etc.) (see Question #5). Projects inconsistent with the appropriate management plans may not be a part of the streamlining process. The goals, objectives, and guidelines in the NMFS's BO for the Snake River Basin National Forest LRMPs will be followed as deemed appropriate by the Level 1 and 2 teams.
2. **Review the current status of listed, proposed, candidate, and other species of concern in the project planning area.** The focus of the project review will be on listed and proposed species. To the extent practical, candidate and other species of concern will be considered by the action agencies in project planning and design (see Question #14).
3. **Identify the consultation information needed for each project, project batch, or program of activities.** In the past, much consultation time was spent resolving incomplete BAs and requests by the regulatory agencies for more information. The transfer of this information added weeks or months to the conclusion of a consultation. The purpose of early communication at this stage is to eliminate this inefficiency. The desired outcome is that the team arrives at a consensus regarding what information should be included in the BAs. All team members should agree on the specific information to be

included in a BA (see Question #11). The action agency may have already developed a draft BA or environmental assessment for the Level 1 team to review or build upon.

4. **Sort projects into categories of "no effect," "may affect/not likely to adversely affect," "may affect/likely to adversely affect," and "other."** Level 1 teams do not need to review projects that are clearly no effect; they need only review "may affect" projects (but see Questions #12 and #13). Some of these **preliminary** determinations may change based on the review of the Level 1 team, but it is expected that the majority of Phase 1 effect determinations will remain consistent throughout the process because of early interagency coordination at the field level. The goal of this process is to develop adequate BAs that will facilitate and expedite the issuance of a BO or concurrence letter.
5. **Involve the Level 2 team in a proposed project when:**
  - a. **issues, not resolvable by the Level 1 team, arise over:**
    - the information needed to complete consultation on a project
    - the determination of effect or reasonable and prudent measures for a project, or
    - whether a project is consistent with the relevant guidance;
  - b. **direction is needed concerning consultation timeframes and workload priorities; or**
  - c. **guidance is needed on feasible mitigation, legal or policy constraints, or managerial constraints.**

See Question #20 for details about elevating issues for resolution.

#### **Phase 2 - Consultation Package Preparation (Informal and Formal)**

In Phase 2, the action agencies will prepare a consultation package based on the preliminary effect determinations and information needs identified in the Phase 1 meetings. **An agreed-upon BA is necessary to conclude informal consultation within 30 days and formal consultations within 60 days.** Level 1 team members will continue to work together to further refine information needs, but information needs will be identified during the Phase 1 communication to the greatest extent possible. Because of the interactions of the regulatory and action agency personnel in the Level 1 teams, it should be possible to identify and include only the information that is required to render a BO. Incorporation by reference and tiering to other documents, such as previous BAs and pertinent watershed analyses, should reduce paperwork and move the process along more quickly; these documents can be included as appendices to the BA (see Question #11).



Below are the Section 7 categories for projects and the general steps to follow to complete streamlined consultation.

*No Effect (NE): No Section 7 consultation required*

1. The action agency documents "NE" determination as part of normal environmental review procedures. No consultation is necessary.
2. Level 1 team review or regulatory agency technical assistance may be requested when the boundary between "NE" and "may affect" is unclear or when the team wants to "calibrate" NE determinations among team members.

*Not Likely to Adversely Affect (NLAA): Informal consultation required*

1. Information needs for regulatory agency concurrence will have been identified to the greatest possible extent during Phase 1. The action agency should receive preliminary agreement from the regulatory agency during Phase 1 prior to making a written request for concurrence (see Question #13).
2. The action agency prepares a final BA with a written request for concurrence of NLAA determination. Written requests for a concurrence letter should accompany the BA and should reference the results of Level 1 team meetings. The BA should include: (a) project descriptions; (b) determinations and species affected; (c) reasons for may affect; and (d) reasons for NLAA. This assessment may include National Environmental Policy Act (NEPA) documents or information needs as agreed to in Phase 1. For projects that are fully consistent with the above referenced management plans and deemed NLAA, it is expected that information needs will be reduced.

*Likely to Adversely Affect (LAA): Formal consultation required*

1. The action agency will complete a BA based on issues and information needs raised by the Level 1 team in Phase 1. In general, consultation packages must contain the information required as per 50 CFR§402.14 (c), identified as necessary for the regulatory agency to sufficiently evaluate the project impacts.
2. Prior to official submission, the action agency should offer a draft BA to the Level 1 team for review and preliminary acceptance of the information and effect determinations. The objective is to ensure the BA will be complete and not result in additional requests for information after submission.

3. The action agency will submit the BA. Written requests for consultation should accompany the BA and should reference the results of Level 1 team meetings. If available, an electronic copy of the BA should be included in the package to quicken regulatory agency turnaround time.

### **Phase 3 - Preparation of Concurrence Letter or BO**

The regulatory agency Level 1 team member will be the official contact person for projects submitted for consultation. This person will be responsible for raising and clarifying any information needs not identified during Phases 1 and 2, and for carrying the project through the regulatory agency's portion of the consultation process in a timely manner.

#### *Informal Consultation*

The regulatory agency will respond to an agreed-upon BA with a concurrence letter within 30 days of receipt of the document.

#### *Formal Consultation*

1. Because of the early Level 1 coordination, it is anticipated that BAs will be complete when submitted to the regulatory agency. **The regulatory agency will review the consultation package for adequacy within two weeks of receipt and, if inadequate, notify the action agency in writing that the 60-day timeframe has not started.** The notification should identify the information needed to correct the inadequacy. If the action agency is not notified of an incomplete BA within two weeks, it will be assumed the document is complete and that the 60-day period started when the BA was submitted. If necessary, the Level 1 team members should work together to quickly have the consultation package revised and resubmitted.
2. The regulatory agency will prepare a BO within 60 days of receipt of an adequate BA. **All reasonable and prudent measures and terms and conditions for incidental take should be discussed and agreed to by the Level 1 team prior to issuance of a final BO.** The Level 2 team may be involved in these discussions if the measures are particularly complex, controversial, or precedent setting.

### **CONCLUSION**

The process described above has been used with great success in many parts of the Northwest, is consistent with the goals and policies of all of the participating agencies, and provides a solid foundation upon which to base long-term ecosystem management efforts. This approach has also contributed greatly to the goal of making Section 7 consultation implementation more efficient

and effective. The process will continue to be updated as new information becomes available and as innovation occurs, and we encourage participants to be creative as they develop solutions to difficult resource management problems.

## Questions and Answers - Streamlined Section 7 Consultation

### GENERAL QUESTIONS AND ANSWERS

#### *Description of the Streamlining "Levels"*

1. *What is the function of the Level 1 teams?* The Level 1 teams represent the heart of the streamlined process. Level 1 teams are composed of biologists and botanists designated by their respective agencies as team members. It is their role to assist land management agencies, so that land management programs and activities are designed to minimize adverse impacts to listed species. Level 1 will function as a **team**. Findings will be by consensus. It is expected that all potentially contentious issues will be aired at this level, and most or all will be resolved before elevation is necessary. General duties of the Level 1 teams include:
  - identify what information is needed in the BA,
  - recommend the scale at which the BA is prepared (see Question #16),
  - review BAs for adequacy,
  - review project determinations to ensure consistency and adequacy,
  - review project design for consistency with existing guidance and/or programmatic consultations,
  - recommend how actions will be sorted, batched, and prioritized,
  - report consultation progress (see Questions #21 and #22), and
  - serve as advisors to Level 2 teams and other line officers; and elevate conflicts as necessary.

Personnel assigned to these teams are listed in Attachment 2.

2. *What is the function of the Level 2 teams?* Level 2 teams are composed of field unit line officers or staff supervisors. The Level 2 teams will:
  - ensure that Level 1 teams have adequate resources and time to complete their duties as described in this document,
  - identify timeframes and priorities for consultation efforts,
  - monitor performance of the Level 1 teams (e.g., by attending Level 1 meetings),
  - resolve disputed issues involving effect determinations, information needs for BAs, reasonable and prudent measures, and compliance with standards and guidelines,
  - elevate unresolved issues to Regional Technical Team, Interagency Coordinators, or the Regional Executive level,

- coordinating other levels of interagency organizations, such as Provincial Interagency Executive Committees, and
- function as a team.

Personnel assigned to these teams are listed in Attachment 2.

3. *What is the function of the Regional Technical Team?* This team provides overall process oversight and technical assistance. Regional Technical Teams are composed of regional technical specialists; they are NOT line officers or decision makers. Project level and policy decisions are made by Level 2 teams and Regional Executives. The duties of the Regional Technical Team include:
- incorporate and identify improvements and needed revision as the process develops,
  - maintain and update the procedures guidance,
  - upon request, address issues about procedures implementation, particularly those effecting more than one team or issues which are of provincial and regional concern,
  - facilitate procedures consistency and communication among teams and states, as necessary,
  - serve as primary advisors on the streamlining process to the Interagency Coordinators and Regional Executives,
  - provide advice and support to Level 1 and 2 teams, upon request, and
  - function as a team.

Personnel assigned to this team are listed in Attachment 2.

4. *What is the function of the Interagency Coordinators?* The Interagency Coordinators are senior staff who function as key policy advisors on the procedures to the Regional Executives and the National Dispute Panel. They provide procedures oversight at the regional level. They are NOT line officers and do not make project level or policy decisions. If disputed issues arise requiring Regional Executive review, they ensure that the executives have an opportunity to promptly address the problem. Personnel assigned to this team are listed in Attachment 2. The Regional Executives have decision authority for issue resolution or policy guidance; they would determine if elevation to the National Dispute Panel is necessary.
5. *What is the role of the National Dispute Panel?* The National Dispute Panel is comprised of representatives from BLM, FS, FWS, NMFS, and the Environmental Protection Agency (EPA) that resolve issues or disputes that have been elevated by the Regional Executives. They are to issue binding resolution within 14 days after receipt of the issue. This panel was established by the August 9, 1995, Memorandum of Agreement on timber salvage-related activities under Public Law PL 104-19.

37. *Is there an interagency policy on ESA consultations concerning access across Federal lands? Yes.* Attachment 4 is the May 16, 1996, interagency memorandum that describes specific consultation procedures for actions involving access across Federal lands. Level 1 biologists, botanists, and other consultation participants should refer to this document when dealing with this issue.

**GUIDANCE SPECIFIC TO CONSULTATIONS ON GEOGRAPHIC AREAS AND ISSUES WILL BE DEVELOPED IN THE FUTURE AS NECESSARY. THIS GUIDANCE IS APPLICABLE IN CALIFORNIA, WASHINGTON, OREGON, AND IDAHO. ADDITIONAL SPECIFIC GUIDANCE WILL BE DEVELOPED FOR IDAHO AND MONTANA, AS NECESSARY.**

Attachments:

1. May 31, 1995, letter signed by Regional Executives - Streamlining Consultation Procedures Under Section 7 of the ESA
2. January 1997 List of Personnel Assigned to Level 1, Level 2, Regional Technical Teams, and Interagency Coordinators
3. Streamlined Consultation Reporting Form
4. May 16, 1996, Guidelines to Streamline ESA Consultation for Access Across Federal Lands - Addendum to the 5/31/95 Streamlining Consultation Procedures Under Section 7 of ESA