| 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 Date: MAY 31 1995

Subject: Streamlining Consultation Procedures Under Section 7 of the Endangered Species Act

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

On March 8, 1995, agency heads of the Forest Service (FS), National Marine Fisheries Service (NMFS), Bureau of Land Management (BLM) and Fish and Wildlife Service (FWS) issued a joint letter directing that consultation procedures for forest health and salvage projects be streamlined to occur within shortened time frames.

We have broadened this direction to include all consultation efforts.[1/] Our success will be determined by a number of factors--especially important will be the amount of interagency involvement during the earliest phases of project development and the degree to which consultation can be concluded at the field level without additional reviews or oversight.

To accomplish this goal, we are chartering two interagency field teams: Level One Teams and Level Two Teams (Enclosure 1).

Level One Teams will consist of interagency biologists with the experience and expertise to make biological determinations and bring consultation to conclusion at the field level. Level One Teams will coordinate with FS District Rangers, BLM Area Managers and their staffs in the early phases of project planning and promptly raise issues they cannot resolve to Level Two Teams (Enclosure 2).

Level Two Teams will consist of FS Forest Supervisors, BLM Ecosystem/District Managers, and NMFS and FWS personnel with decision-making authority. Level Two Teams will establish priorities, secure resources, monitor performance, and resolve issues elevated by Level One Teams. Issues that cannot be resolved by Level Two teams will be forwarded on to us for resolution.

A regional interagency technical staff will be available to assist field teams, if requested (Enclosure 3). In addition, each regional office has appointed an individual to serve as a Key Contact with the responsibility to monitor accomplishment, facilitate issue resolution, and keep us informed of progress and issues that require our involvement (Enclosure 4).

We expect the following:

1. Recognizing that consultations have already occurred on the Northwest Forest Plan, PACFISH, and the eight eastside Land and Resource Management Plans with critical habitat for listed salmon stocks, we expect consultation to be rapidly concluded on projects that comply with the standards and guidelines of these programmatic plans and the provisions of their Biological Opinions.

2. Level One Teams will agree on information, documentation, format, and timeframes before proceeding with the development of Biological Evaluations/Assessments (BE/BA) and Biological Opinions.

3. The Section 7 consultation process will be simplified and streamlined (e.g., batching similar projects in same area or with similar timing needs; combined interagency consultations, etc.) to complete informal consultations within 30 days and formal consultations within 60 days after submission of agreed-upon BA.

4. Issues, barriers, or disagreements that would preclude meeting these timeframes will be promptly elevated to the appropriate level for resolution.

5. Performance will be assessed regularly by each team to evaluate progress and make adjustments as needed.

We will be conducting workshops to ensure our expectations are clear and to discuss more fully the concepts behind this strategy.

Achieving our goal will require unprecedented interagency cooperation and bold new ways of doing business. It will require an interagency work environment based on professionalism, trust, mutual respect, and accountability. We will build on our interagency successes of the past to make this new, more streamlined and effective consultation process a reality.

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/s/ Hilda Diaz Soltero
HILDA DIAZ-SOLTERO
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Enclosures (4)

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

| 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: 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 Executives 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.

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

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**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.

***Completion Times for Consultation***

6. *Are the 30 and 60-day timeframes to be used as guidance, or will the agencies be required to meet these deadlines?* These timeframes should be considered deadlines. **However, they are not in effect until final BAs, which have undergone Level 1 team review, are received by the regulatory agencies for formal or informal consultation.** The date on which an adequate BA (as determined by interagency review) is received by the regulatory agencies will dictate the 30 or 60-day deadline.

7. *What constitutes a beginning date for timeframes specified in the process, and do time limits restart for issues that are elevated to Level 2 teams?* The beginning date for consultation is the day a BA agreed-upon by all members of the Level 1 team is received by the regulatory agency, accompanied by a written request for consultation. It is imperative that the action agency submit only final BAs that all Level 1 team members deem adequate. Official timeframes will not be activated if an issue is unresolved and subsequently elevated to the Level 2 team because a BA will not have been agreed-upon by all members of the Level 1 team. After the issue is resolved by the Level 2 team, an agreed-upon BA can be submitted and the appropriate deadline will be in place.

8. *Is it acceptable to exceed the 60-day response timeframe for BOs? If so, when?* Yes, in very limited and specific situations, a 60-day turnaround for the BO may be exceeded. First, it should be noted that one of the principal reasons and goals of the streamlined consultation process was to establish and ensure the 30 and 60-day response time. However, exceeding 60 days may be acceptable if the consultation is a very large-scale, complex consultation such as a multi-year, multiple administrative unit, programmatic type that requires much more extensive regulatory agency analysis and review to complete the BO. Other situations, such as applicant involvement or elevation of issues beyond the Level 1 team, may make a 60-day response unlikely or uncertain. If an issue is elevated, resolution should have occurred prior to BA submission (see Question #7).

   Prior to the submission of the final BA, the Level 1 and 2 teams must identify the need and concur on the extension of the BO response timeframe. An agreed-upon response date will be established at the time. Extensions should be reported on the quarterly reporting form (see Questions #21 and #22). It is recommended the teams document the agreement in a brief note and notify their Interagency Coordinators. If an applicant is involved, they must be notified of the extension if it exceeds the timeframe in the Endangered Species Act (ESA) regulations (50 CFR 402.14).

***Implementation and Applicability***

9. *Does this streamlined process apply to all consultations or just to timber salvage?* The streamlining agreement will apply to all consultations involving FS and BLM activities. The BLM in California only applies the process to Section 7 consultations involving forest ecosystem activities.

   Presently, this process applies to FS, FWS, NMFS, and BLM. Other Federal agencies, such as the Bureau of Indian Affairs or Army Corps of Engineers, may find it useful and applicable to their consultation efforts. In addition, the organization and coordination structure utilized by this process may be useful for other interagency efforts.

***NEPA and the ESA***

10. *What is the relationship between the streamlining process for consultation and the NEPA process? What is the role of the Level 1 team with respect to the NEPA process?*
    In general, the NEPA process usually precedes ESA consultation because NEPA involves scoping the issues and the development of several alternative proposed actions. It is expected that the action agencies will plan and design project alternatives under the NEPA Interdisciplinary Team (IDT) process at the administrative unit level where the project will be carried out--usually the BLM Resource Area or FS Ranger District level. During the IDT process, an alternative will be designed to meet the existing plan guidance and regulatory requirements. To the extent possible, FWS and NMFS personnel should participate in this “early planning” phase of the process. If direct involvement by regulatory personnel is not possible, action agency personnel should contact FWS and NMFS personnel during the interdisciplinary process to solicit their preliminary recommendations relative to ESA considerations. In this manner, it may be possible to gain regulatory agency participation through representation by their land management agency counterparts (Resource Area and Ranger District fish and wildlife biologists and botanists). The land management agency biologist or botanist then has the responsibility to keep the regulatory biologist or botanist updated on the interdisciplinary process.

    Involvement by FWS and NMFS personnel, either directly or through representation, is important to meet direction for the geographic areas covered by the Record of Decision (ROD) for the NFP. The ROD states that "Future consultation under the Endangered Species Act will emphasize an integrated ecosystem approach. This will include involving the Fish and Wildlife Service and the National Marine Fisheries Service when land management agencies begin to develop their plans for a particular area so the views of consulting agencies can be made known.” (ROD, page 54)

Once the interdisciplinary process is completed and timeframes are agreed to by Level 1 and 2 teams, the proposed projects will be prioritized by the action agency and brought to a meeting where the Level 1 team will review the actions and the preliminary effect determinations. The Level 1 team may be helpful in identifying potential effects of various alternatives, but their review will normally deal only with the preferred alternative. If the Level 1 team has concerns about the effects of any action, they should discuss possible modifications that could be made to reduce the effects. At least two possible scenarios can develop when concerns are identified: Scenario 1, if the Level 1 team agrees that such modifications are appropriate, the action agency team members should present recommendations for modifications to the responsible deciding official (such as the Area Manager or District Ranger) for resolution; or Scenario 2, if the responsible deciding official cannot agree to the modifications, then the issue needs to be immediately raised from the Level 1 to the Level 2 team for resolution; and likewise, if there is not a consensus among Level 1 team members that the action needs to be modified, the issue should be immediately raised to the Level 2 team for resolution (see Question #20).

***Information Needs and Approaches for Consultation***

11. *What constitutes a "complete" or adequate BA?* A complete BA is one that **all Level 1 team members agree is sufficient to permit a scientifically credible BO** (i.e., it satisfies the requirements of 50 CFR§402.12(f) and 50 CFR§402.14(c)). The specific contents of such assessments will vary depending on the species being considered; these contents will be identified and agreed to by all Level 1 team members. The BA should include a discussion of how the action is consistent with relevant management plans (e.g., NFP, PACFISH, INFISH) if there is any question on this issue.

12. *What types of projects will the team review?* Level 1 teams will review all FS and BLM actions that "may affect" listed or proposed species. The regulations (50 CFR§402.02) define "effects of the action." Action agencies may bring "no effect" projects to the team for consideration if the certainty of the "no effect" determination is in question and the action agency is seeking the advice of the Level 1 team in addressing the uncertainty. In the initial stages of the streamlining effort, it may be useful for team members to bring forward some "NE" projects to develop a team consensus on what types of actions meet the criteria for "NE" determinations. In some cases, information on candidate and other species of concern may be reviewed and advice offered as applicable (see Question #14).

13. *Will the regulatory agencies be expected to concur with NLAA determinations during the Level 1 team review if a BA has not yet been prepared?* BAs will be prepared by the action agencies for all projects that may affect listed species, and action agency biologists need to clearly document the rationale for effects determinations. The regulatory agency team member will use

his or her discretion to provide **preliminary** agreement with the action agency's **preliminary** effects determination. The ability to provide such an agreement will depend on the complexity of the project and the level of information presented at the Level 1 meetings. In some cases, such agreements should be relatively simple and straightforward. For other projects, review will require a completed BA and additional consideration before an effects determination can be made and agreed to. It is important to note that consultation is not complete until written concurrence, as per 50 CFR§402.13, has been received from the regulatory agencies.

14. *To what extent will Level 1 teams evaluate the effects of proposed actions on species that are not Federally listed or proposed?* Evaluation of effects on Federal candidates, species under status review, and other species of concern, which are not Federally listed or proposed, should be considered to the extent possible as part of the early planning effort (50 CFR§402.12(d)). For the sake of this discussion, species of concern may include those state-listed as threatened or endangered, FS sensitive, BLM sensitive, survey and manage species identified in the NFP, and other regional species of concern. The Level 1 team process can provide one forum for interagency technical coordination and assistance on this issue. The **amount of time and effort spent on these species is at the discretion of the team** and **should not hinder the timely completion of consultation on the Federally listed or proposed species and critical habitats**.

If the Level 1 team opts to address these species, methods can range from informal discussions to formal documentation. For example, when an activity affects both listed and non-listed species, it may enhance efficiency and ensure compatible mitigation for the Level 1 teams to discuss both species. Documentation could occur in an appendix to the BA and/or BO. However, other opportunities and mechanisms, besides the Level 1 teams, exist for incorporation of regulatory agency input on these species. The interdisciplinary forums during NEPA processes, watershed analysis, and other early analysis and planning efforts often require addressing these species for adequate and appropriate activity mitigation. Regulatory agency staff input can be solicited and considered at this time (see Question #10).

The action agencies have their own policies and mandates to address these species. FS Manual 2670.22 directs that projects must be developed and implemented to ensure that sensitive species do not become threatened or endangered because of FS actions. The BLM 6840 policy requires that the agency not take an action that contributes to the need to list Federal candidate, state listed, and BLM sensitive species. Protection requirements also exist for species like the NFP survey and manage species. The regulatory agencies are one of the key sources of input on the species that facilitate action agency compliance with these policies.

Designing projects to fully protect the needs of these species is strongly recommended as a long-term investment that will result in significant benefit to species conservation and efficiency in project implementation. When a project has been designed to protect the needs of these species, it moves quickly through the consultation process if species become listed. Many candidate and other species are on a declining trend, and management actions should be implemented to help prevent the need for listing. The most significant and proactive approach is conserving these species and minimizing future or proposed listings through project planning and design.

**Note: Candidate species, those where significant information exists on their status and threats to propose them as endangered or threatened, are designated by FWS. Species under status review, a comparable category that identifies a species where listing may be warranted, are designated by NMFS.**

15. *Will teams review projects for compliance with the programmatic guidance of relevant management plans (e.g., NFP, PACFISH, INFISH, etc.) or other programmatic actions that have already undergone Section 7 consultation?*

The **primary purpose of this process is to streamline Section 7 consultation**. Therefore, teams will review actions for compliance with land management plans to the extent necessary to evaluate the effects of a proposed action on listed or proposed species and other species of concern, if time permits. It is expected that all actions brought to the Level 1 team for consultation will be designed to comply with the relevant guidance and BOs. If questions of interpretation arise during Level 1 review, all effort should be made to resolve them at this level. If the Level 1 team agrees that a project is not consistent with the relevant plan or previous BO, the project will be returned to the action agency for review and modification. If the team does not agree on project consistency, then follow the elevation procedures (see Question #20). The Level 1 team may request, and the action agency representative will provide, an explanation of how the action complies with the plan or opinion. It may be prudent in some cases to include this explanantion in the BA or as part of the administrative record.

However, it is **important to recognize that the Level 1 team is <u>not</u> a plan compliance review body with responsibilities to review all actions against all aspects of existing plans.** It is the responsibility of the action agency to ensure that all actions brought to the Level 1 team for consultation comply with the relevant standards and guidelines and previous BOs. The key compliance issue for the Level 1 team is the extent to which potential noncompliance may affect the species under consultation. If the potential noncompliance does not directly affect the regulatory agencies' ability to complete consultation, the noncompliance issue should be noted and elevated to Level 2 for their information.

Differences in compliance interpretation for a few projects should not disrupt the consultation on a majority of projects that are clearly consistent with the relevant plan or previous BO.

16. *Is using a "provincial," river basin, or programmatic approach to analyze species and habitat information critical to the consultation process? Where has this occurred?* Yes, analysis at a provincial or watershed-based level will help ensure that the full intent of programmatic guidance such as the NFP, PACFISH, recovery plans, or conservation agreements can be met. Level 1 teams are strongly encouraged to develop programmatic consultations. Analysis at this scale will enable us to better understand the current condition of listed species and habitats, and allow us to assess the likely future conditions as a result of implementation of programmatic or other landscape-level plans or BOs; it also provides for consultation on a broader, ecosystem scale. In general, an analysis should be done at the largest scale possible (e.g., multi-agency, multi-administrative unit, multi-project, and potentially multi-year) to allow for a more meaningful picture of the ecological situation. In the absence of a large-scale analysis, a smaller landscape-level analysis should be attempted.

Over the past year, a number of efforts have been initiated to plan, review, and evaluate projects at a programmatic level, e.g., a multi-year, multi-program consultation on the Olympic National Forest and Olympic National Park in Washington; a multi-program, multi-agency consultation covering projects on the Rogue and Siskiyou National Forests and Roseburg and Medford BLM Districts in Oregon; and a multi-year salvage consultation for four National Forests in northern California. Although this has mostly occurred under the NFP, the results of this type of approach are applicable in other areas as well. The primary intent was to reduce the consultation workload for programs that are similar in nature and occur annually, e.g., silvicultural programs, fish and wildlife habitat improvement and restoration, recreation programs, and road maintenance.

The general approach used in the above examples has been to include as many programs and activities as possible, and as many listed species and critical habitats as appropriate, in the BA and consultation documents. Programmatic documents with project design standards commensurate with these conservation measures have greatly expedited the consultation process, and have provided a framework for discussion and quicker resolution of questions about the appropriate effects determinations even for projects not ultimately tiered to the consultation. The result has been greatly decreased time commitments to consultation, thus allowing staff to focus their efforts on planning, project development, and other activities. Contact your local FWS or NMFS field office for details.

***Team Operations***

17. *How can the Level 1 teams operate most efficiently?* With a year of experience to draw upon, the following points have proven successful in creating an efficient interagency environment for Level 1 team operations:
    - meet early in the planning process,
    - communicate regularly and often--in person, via phone, e-mail, fax, etc.,
    - use an independent facilitator where available for larger meetings,
    - provide team members with the rationale for effects determination in adequate detail,
    - only present projects that have been sent out in advance for team review,
    - limit discussions to points of clarification and focus on concurrence or conditional agreement,
    - present projects that are in compliance with the programmatic guidance or relative management plans,
    - maintain clear, concise records of team meetings, consensus agreements, and decisions,
    - identify agendas and meeting attendance that are focused and efficient,
    - ensure all issues are identified and resolved prior to submission of a final BA,
    - postpone concurrence on projects not fully reviewed or lacking concurrence on effects determination until the next Level 1 meeting, or have the team identify a solution to resolve the issue (e.g., informal follow-up discussion),
    - develop working groups as appropriate to address specific issues (e.g. fish, plants),
    - invite appropriate non-biologist or botanist staff, as needed, to provide additional background and data for project review, and
    - regularly apprise the Level 2 team of Level 1 team process and progress, and request their early guidance on workload, priorities and timeframes, as necessary.

18. *How and when will the Level 1 and Level 2 teams meet?* Level 1 teams should meet often and on a regular basis. The meeting format (in person, conference calls, etc.) and frequency will be determined by team members based on the relative priority or urgency of the projects or programs needing review. It is recommended that the teams select a logistical leader to organize meetings and scheduling. The Level 2 team will meet to provide guidance to the Level 1 team, when requested by the Level 1 team to resolve issues, and to facilitate their own team coordination. Quarterly meetings of the Level 2 team are suggested.

    Level 1 teams are encouraged to invite knowledgeable personnel, such as biologists, botanists, line officers, or range and silviculture specialists, to their meetings to ensure specific projects can be fully discussed and assessed. However, only designated Level 1 team members or their official representatives are empowered to reach initial consensus on information requirements and effects determinations. Contingent upon projects and issues under consideration, all or only some of the Level 1 members may need to attend meetings.

19. *What happens if the Level 1 team decides that they cannot concur with the preliminary effects determination for an action*? In this event, the action agency may: (a) provide additional information in support of their determination; (b) accept the consensus opinion of effects of the Level 1 team; or (c) modify the project with the assistance of the Level 1 team and approval of respective deciding officials or Level 2 team members.

***Elevation of Issues***

20. *What is the process for elevating issues for resolution from Level 1 teams? From the Level 2 teams?* Issues should be elevated to Level 2 when differences in interpretation prevent Level 1 members from reaching a workable consensus to clarify policy and direction, or to ensure Level 2 understanding or concurrence on issues. As long as these differences are based on professional, objective consideration of issues there should be no stigma attached to elevation to Level 2. **Such elevation should not be considered a "failure."** Instead, it is a sign that the system is working to identify problems of conflicting policy or interpretation of standards. The intent is to avoid surprises. Elevation of an issue should not prevent the team from working on other projects independent of that issue.

Elevation can be accomplished by a short letter signed by Level 1 staff from each of the agencies involved. The letter will simply state that there is disagreement or concern about the issue and that the parties agree to elevate. This elevation letter will not describe the issue in detail or necessarily discuss solutions, thus eliminating delays over mutually acceptable language. However, this co-signed elevation letter will be accompanied by a succinct position statement written by the Level 1 staff from each agency clarifying why consensus cannot be reached by the Level 1 team. If appropriate, these statements may include suggested remedies to the situation offered by respective Level 1 team members.

The purpose of the elevation letter and these position statements is to provide the Level 2 line officers with all perspectives of the disagreement or policy dilemma. The position statement from one agency need not be approved by staff from the other agency. This information will better enable the Level 2 team--or Regional Executives if necessary--to make an informed policy decision.

Issues that cannot be resolved by Level 2 teams will be resolved by the Regional Executives (or their appointed designates such as Regional Technical Team or Interagency Coordinators) in a similar fashion. The Level 2 team will elevate to the Regional Executives or designees with a simple letter notifying them of the issue and need for resolution. A copy should be sent to the respective Interagency Coordinators. The Level 1 position statements will accompany this

elevation, as well as any other material that the Level 2 team may wish to provide. The Regional Executives or designees will then make an interagency decision and will instruct the Level 1 and 2 teams how to proceed on the issue. If needed, the Regional Executives will elevate an issue or project to the National Dispute Panel. Once resolved, the project will be routed back to the Level 1 team for further processing.

The outcome of elevated issues will be documented by the FWS Regional Technical Team reporting coordinator, who will include this information, when appropriate, in reporting form summaries that are distributed to BLM, FS, FWS, and NMFS on a quarterly basis.

***Reporting on the Streamlined Consultation Process***

21. *How will the process be tracked and evaluated?* The Regional Senior Technical Team has developed a simple reporting form (see Attachment 3). The purpose of the form is to summarize the status and activity level of the streamlined consultation process. This form will be filled out by a regulatory agency team member on a quarterly basis and sent to a designated person on the Regional Senior Technical team. The Regional Senior Technical team will summarize the results and make them available to all participating agencies. Level 1 teams are also encouraged to develop, if needed, their own tracking procedures for their level of detail and information needs.

22. *Who will be filling out the reporting form and sending it to the Regional Technical Team?* The FWS and/or NMFS representatives on each Level 1 team are responsible for filling out the reporting form. The Level 1 team will identify which individuals will be responsible.

23. *What is the definition of "project" in the "Team Review Report" table on the reporting form?* Projects are equivalent to individual actions. For example, a single consultation request for grazing activities might involve grazing permits on several different allotments. Because these allotments may occur in different parts of the forest/district (potentially affecting different species) or in different watersheds (involving, for instance, fish-bearing versus non-fish-bearing streams), they should be counted individually. The Team Review Report table for this example would reflect X number of grazing projects reviewed, but the "Consultation" table would reflect one consultation (pending or complete) for the grazing activity in the forest/district. With the emphasis towards batching projects in submitting BAs and issuing BOs, it is important that we track the individual actions reviewed to reflect the actual workload.

24. *How should programmatic consultations, involving several different activities/project types, be reported?* A single programmatic consultation could involve, for example, green timber sale,

right-of-way, and maintenance activities/project types. The Team Review Report should indicate the number of activities/project types reviewed for each consultation. The Consultation table, however, should only reflect a single consultation pending or completed. For example, a "1P" or "1C" would be placed in the appropriate "Consultation Status" column of the Consultation table for the green timber sale, right-of-way, and maintenance activities, indicating that a single programmatic consultation (P) for those three activities was conducted (or is pending). If more than one programmatic consultation is submitted for a report, this should be indicated by 1P.1, 1P.2, etc., or by some other method with an appropriate footnote. Once again, we need to accurately track the number of consultations completed for the streamlining process, but we also want to keep track of the individual activities and/or project types reviewed. Additional notes on the type and extent of actions covered under a programmatic consultation are extremely useful and are encouraged.

25. *How should salvage/forest health consultations be reported?* The Washington, D.C., agency offices have requested that reports of salvage-related consultations conducted under the streamlining process be counted separately until further notice. The submitted form should contain the following information: name of sale, administrative unit, board feet or acres involved, date the BA/BE was received, and date the consultation/concurrence letter was completed. This information can be footnoted or attached to the reporting form.

26. *When should streamlining reports be submitted?* Reports should be submitted on a quarterly basis by the fifth day of January, April, July, and October.

27. *Does the above reporting satisfy the requirements for Section 7 consultation by monitoring and tracking the impacts of an action, particularly for incidental take?* Although the forms could be combined for efficiency purposes, the type of information and the specificity needed to track incidental take is different from what is needed to report on the streamlining process. All agencies requesting formal consultation for projects involving the incidental take of a listed species must monitor the impacts of incidental take as required by the ESA: agencies "must report the progress of the action and its impact on the species" (50 CFR §402.14(i)(3)). Besides the fact that monitoring is an ESA requirement, provincial/programmatic BAs lack specifics for proposed projects. Monitoring is needed to track actions assessed within the BO. The monitoring provides regulatory agencies with information essential to assessing the effects of various actions on listed species and designated critical habitat. The information allows regulatory agencies to refine BOs, reasonable and prudent alternatives, reasonable and prudent measures, and terms and conditions.

A monitoring report should be designed to do the following: (a) detect adverse effects resulting from a proposed action; (b) detect when the level of anticipated incidental take is approached;

(c) detect when the level of anticipated incidental take is exceeded; and (d) determine the effectiveness of reasonable and prudent measures. With the large-scale provincial/programmatic consultations, a monitoring report will aid action agencies in determining their progress/accomplishments as outlined in their BA. A reporting date for the monitoring reports is negotiated by the Level 1 teams. Minimally, the monitoring reports would be due at least annually. However, teams are encouraged to report quarterly and to use the reports to track progress of the proposed actions.

***Reinitiation of Consultation***

28. *What conditions would prompt reinitiation of consultation, and what would the corresponding timeframes be for completing consultation as a result of a request for reinitiation*? There are four general conditions that require reinitiation of consultation, as per 50 CFR§402.16: (a) new information reveals effects of the action may affect listed species or critical habitat in a manner or to an extent not previously considered; (b) the action is modified in a manner causing adverse effects to listed species or critical habitat not previously considered; (c) a new species is listed or critical habitat designated that may be affected by the action; and (d) the amount or extent of incidental take is exceeded. The same 30 and 60-day timeframes discussed in Question #6 would apply.

***Role of Applicants***

29. *What is the role of an applicant in the streamlined consultation process?* The role of the applicant under this streamlined process for consultation remains the same as for traditional consultation per 50 CFR§402.11 and §402.14. Applicants have the opportunity to be involved in the consultation process by: (a) submitting written information for consideration during the consultation; (b) reviewing and providing written comments on draft BOs; (c) discussing potential reasonable and prudent alternatives with the action and regulatory agencies; and (d) either consenting to or rejecting greater than 60-day extensions of the normal consultation period. With the accelerated schedule for completion of consultation under the streamlining process, it will be imperative for the action agencies to involve the applicants early in the process and to develop efficient ways to incorporate their comments. Applicants should be advised of the shortened timeframes and should be prepared to respond accordingly. Refer to existing agency direction regarding the identification of applicants for the consultation process. Level 1 teams should verify if applicants are involved and if they have been apprised of the project's status in the consultation process.

**GUIDANCE SPECIFIC TO AREAS COVERED BY THE NFP**

***Land Allocation Specific Information***

30. *Is consultation under the NFP required for projects or actions in the Matrix or in Adaptive Management Areas?* Yes, consultation is required for any project or activity that "may affect" listed species regardless of the land allocation under the NFP, including Matrix and Adaptive Management Areas. The NFP BO did not eliminate the need for consultation for NFP activities, and the ROD directs the agencies to continue to engage in informal and formal Section 7 consultation (ROD, page 54). The BO assumed that the regulatory agencies would "work cooperatively with other Federal agencies in watershed analyses and project and province level planning to facilitate future section 7 consultations," and they "anticipate providing section 7 consultations that will address planning at larger scales than individual projects . . . Efforts will be made to consult on the largest area practicable to eliminate unnecessary delays in management planning" (see Question #16 for discussion of provincial level analysis).

    In general, actions consistent with the ROD or Aquatic Conservation Strategy objectives may be assumed to be no jeopardy or adverse modification, but project, watershed, or program-specific Section 7 consultation is still necessary to validate this assumption. The agencies will continue to use "reasonable and prudent measures" and other Section 7 tools to minimize take and advance recovery of listed species. For example, incidental take of northern spotted owls (NSOs) in the Matrix is likely to be permitted, but the Level 1 teams will continue to develop reasonable and prudent measures to minimize this take and enhance the conservation of the species. Likewise, localized adverse effects to designated critical habitat in the Matrix may be permitted to take place as long as the neighboring Late-Successional Reserves (LSRs) are adequately performing the critical habitat function for which they were designated; FWS assumed such issues would be "addressed in watershed analyses and subsequent plannng efforts" (NFP BO, page 41).

31. *Is an assessment of LSRs ("functionality") necessary to help address consultation questions about habitat loss or modification, or incidental take of NSO or marbled murrelets in the Matrix?* The most important issue to consider for most listed species is habitat loss or modification. Gaining an understanding of the condition and status of the species and its habitat is basic to the consultation process. Incidental take resulting from habitat loss or modification will have a greater effect on the long-term recovery of listed species than, say, noise disturbance, and should be addressed in relation to the rate of take over time. Managing the rate at which incidental take occurs should be considered when evaluating the functionality or ability of the reserve system to provide for a well-distributed population over time. For example, as an option, projects in the Matrix may be designed to minimize impacts in the short term where there are concerns that LSRs in the area may not be currently contributing to well-distributed populations.

However, functionality is not a well-defined term. The NFP did not establish targets for the numbers of individuals of a species which need to be maintained or managed for within LSRs. The focus was on the ability of the reserve system to provide habitat to successfully support viable populations regardless of the number of individuals. Therefore, any analysis for consultation purposes should begin with the current condition of the habitat and associated listed species within the project area, particularly within neighboring LSRs. For example, an evaluation for NSOs could consider the amount, distribution, and condition (e.g., fragmentation, patch size) of existing habitat within the average home range circle of known or expected pairs of NSOs around the project site, and in and around adjacent LSRs. The proportion (40 percent) of suitable habitat within NSO circles has been used as the starting place for assessing project impacts for take from habitat loss. This type of analysis would give Level 1 teams a general sense of the ability of the habitat to support NSOs in the near term.

However, a provincial-level analysis (see Question #16) should also be used to assist managers in understanding the status of NSOs or murrelets within the reserve system and would provide a basis for determining an appropriate rate of take. The intent is to enable the Level 1 teams to evaluate the amount and distribution of incidental take beyond an individual project so as to understand the impact on recovery, thus creating a better basis for discussion on managing take and planning future projects.

***Disturbance and Seasonal Restrictions***

32. *Are seasonal restrictions (or limited operating periods) to be used to minimize the risk of incidental take of listed species? Is there interagency guidance on how to make effects determinations for actions that may affect listed species, for example, through noise disturbance?*

Seasonal restrictions should be applied where it is reasonable and prudent to do so; dates may vary by state or province. Level 1 teams will continue to have the responsibility and flexibility to recommend these restrictions in a manner that is reasonable and prudent, based on consideration of site-specific conditions. Consideration may be given to applying reduced restrictions in the Matrix where less protection is expected under the NFP (see Question #31), where project requirements limit the options to apply restrictions, or in some disturbance situations. In general, benefits to the species should outweigh the costs (project effectiveness, economic, logistic, etc.) to the action agency when a reasonable and prudent measure is applied. This determination is often difficult to make, especially when dealing with elusive species such as the murrelet; but the biologists and project planners will use their best professional judgment to reach an agreeable determination

It is well established that many human activities negatively affect some listed birds and mammals, e.g., bald eagles. Studies have shown that noises associated with human activities can affect bird behavior in a number of ways, including nest abandonment, increased nest predation, or avoidance of otherwise suitable habitat. Although there is no formal research, it is hypothesized that activities that generate high intensity noise (even if they do not remove suitable nesting habitat) have the potential to disturb nesting NSOs and murrelets, resulting in the incidental take of young and adults. The risk of take of the murrelet is especially difficult to determine because of the elusive nature of this species. However, the probability of a Section 7 determination of jeopardy resulting from disturbance to NSOs or murrelets is low because of the dispersed nature of the species in the forest, and because there are no long-lasting physical impacts to nesting habitat. Nevertheless, the potential exists that nesting birds, particularly in unsurveyed habitat, may be affected; and Section 7 consultation is required for these actions to proceed.

The following three-step procedure may be helpful in evaluating the probability that nesting NSOs, murrelets, or other species may be adversely affected by disturbance-generating or other activities.

a. Evaluate the probability that NSOs or murrelets are breeding in the affected habitat. Is the habitat of high, medium, or low quality? Consider factors such as stand size, tree size, platform density, proximity to the coast, and survey information from nearby areas.

b. Determine whether the noise or disturbance will be of sufficient duration and magnitude to affect nesting birds. Is the disturbance event large or small, long or short in duration, and high or low in intensity?

c. Assess the vulnerability or sensitivity of NSOs or murrelets to the potential disturbance. For example, is the affected habitat near areas where birds may have already become habituated to human activities, or is it in a relatively undisturbed area where birds are likely to be more unaccustomed to disturbances? Will the disturbance occur early or late in the breeding season? Do topographic features act as a screen to reduce noise?

The resulting conclusions can be used to identify take minimization measures that are reasonable and prudent, thus reducing the potential risk to the species.

***Critical Habitat Issues***

33. *How can action agencies design projects to avoid adverse effects to marbled murrelet critical habitat?* All Federal lands designated as critical habitat that are subject to streamlining

occur in LSRs. Actions planned in LSRs and consistent with the NFP standards and guidelines should be designed to facilitate (or be neutral to) the development of late-successional habitat conditions. This generally includes retaining and promoting the development of older, larger trees suitable for murrelet nesting. These projects should promote development of the primary constituent elements of murrelet critical habitat which include potential nest trees and suitable forest within 0.5 miles. To avoid adverse effects, projects should be designed to avoid the removal or degradation of primary constituent elements or the function they perform.

Some actions allowed in LSRs, such as commercial thinnings, may adversely affect critical habitat in the short term because they may thin the surrounding forested area such that it no longer provides adequate cover for the nest trees. However, these actions should not reach the adverse modification threshold because the thinnings should retain a maximum component of potential nest trees, generally should not result in the harvest of stands over 80 years of age, and should leave the forests functional as murrelet habitat in the long term. Thinnings should facilitate the long-term health of late-successional habitat and ultimately result in a beneficial effect to murrelet critical habitat.

34. *What is the process for addressing consultation questions about critical habitat for the NSO?* If the primary constituent elements of critical habitat are modified, then an analysis of the project through Level 1 should be undertaken to determine whether or not formal consultation is appropriate. Where some critical habitat may be in the Matrix, the analysis should consider whether the adjacent LSRs and Riparian Reserves currently perform the designated biological function of the critical habitat units being affected. If the combination of NFP allocations in their current condition can perform the function of critical habitat, less emphasis would be placed on the value of critical habitat in the Matrix. An analysis should at a minimum consider the amount, distribution, and condition of existing habitat (meeting the constituent elements), and should compare (if appropriate) data for Matrix critical habitat with habitat meeting similar conditions in adjacent reserves. The intent is to assess whether proposed activities have more than a minimal effect on critical habitat or if adjacent LSRs (for critical habitat in the Matrix) do not offer a reasonable substitute. The analysis should be done at the largest scale possible (e.g., province or at least river basin) to provide an opportunity to assess localized deficiencies in a larger context.

35. *How should other listed species or their critical habitats be addressed?* Section 7 consultation guidance for other species and critical habitats in the NFP area (43 species and critical habitats), which were listed by the date of the ROD, has not generally changed from that previously specified. There have also been some new listings or proposed critical habitats and species (Lost River sucker, shortnose sucker, and western snowy plover critical habitats; Umpqua cutthroat trout and various coho and steelhead evolutionarily significant units) since the

ROD was signed that may be affected by NFP activities and that should be considered in project planning. Consultation/conferencing at the LRMP and RMP level for these species and critical habitats is ongoing. These additional assessments would be handled on a local basis and should be conducted using current processes and criteria based on continued research, monitoring, and/or recovery objectives, where available. Emphasis is to address as many issues as possible through informal discussions using the Level 1 process.

## GUIDANCE SPECIFIC TO ANADROMOUS FISH CONSULTATION

36. *What is the NMFS "effects matrix," and how is it meant to be used?* The September 4, 1996, document "Making Endangered Species Act (ESA) Determinations of Effect for Individual or Grouped Actions at the Watershed Scale" was developed by NMFS, in collaboration with FS, BLM, FWS, and EPA, as a method for evaluating the effects of human activities on anadromous fish and their habitat. The document is based on a "Matrix of Pathways and Indicators" for anadromous fish habitat and predicts the effect of human activities on these environmental baseline conditions.

The "Matrix of Pathways and Indicators" provides generalized ranges of functional values for aquatic, riparian, and watershed elements that collectively describe properly functioning aquatic habitat essential for the survival and recovery of anadromous fish. Properly functioning values for these matrix elements correspond directly with the NFP Aquatic Conservation Strategy objectives that are important to Pacific anadromous salmonids. Values provided in the generalized matrix are a starting point for Level 1 team discussions, as it is recognized that they may not be appropriate for all watersheds within the range of Pacific anadromous salmonids. Level 1 teams are encouraged to adapt the general matrix as necessary to reflect the local geologic and climactic influences on aquatic habitat and watershed conditions within specific physiographic areas.

Level 1 teams are encouraged to apply the processes described in "Making Endangered Species Act (ESA) Determinations of Effect for Individual or Grouped Actions at the Watershed Scale" for evaluating the effects of land management actions on listed or proposed anadromous salmonid species. Guidance on the use of this process for consultations within the NFP area was provided by FS, BLM, FWS and NMFS Regional Executives in their joint memorandum dated September 13, 1996. It is expected that further guidance on the use of this process will be forthcoming in programmatic biological and conference opinions that are currently being developed for LRMPs within the NFP area.

## GUIDANCE SPECIFIC TO CONSULTATIONS ON ACCESS

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