

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****Notice of Availability of Final Endangered Species Consultation Handbook for Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act**

**AGENCIES:** Fish and Wildlife Service, Interior, and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice

**SUMMARY:** The Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS), hereafter referred to as the Services, announce the availability of their final joint Endangered Species Consultation Handbook. This document provides internal guidance to all employees of the two agencies relative to conducting consultations and conferences under section 7 of the Endangered Species Act of 1973, as amended (Act). Its purpose is to provide policy and guidance for section 7 procedures to promote efficiency and nationwide consistency within and between the Services. Although intended primarily as internal agency guidance, this handbook is fully available for public information and use.

**FOR FURTHER INFORMATION CONTACT:** Sandy Tucker, Division of Endangered Species, Fish and Wildlife Service (telephone 703-358-2106; or Craig Johnson, Office of Protected Resources, National Marine Fisheries Service (telephone 301-713-1401).

**SUPPLEMENTARY INFORMATION:****Background**

Section 7 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) outlines the procedures for interagency cooperation to conserve Federally listed species and designated critical habitats. Section 7(a)(1) of the Act directs all Federal agencies to utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of species listed pursuant to the Act. Section 7(a)(2) of the Act requires Federal agencies to insure that their actions are not likely to jeopardize listed species or result in the destruction or adverse modification of designated critical habitat. The consultation process between the

Services and other Federal agencies to verify avoidance of jeopardy is generally defined in 50 CFR part 402 and further developed in this handbook.

This handbook provides consistent procedures for the Services' compliance with the consultation and conference provisions of section 7 of the Act by:

- (1) Providing national procedural and policy guidance;
- (2) Providing standardized guidance to Service offices and personnel who participate in consultation and conferencing procedures under section 7;
- (3) Providing assistance to other Federal agencies and applicants in the non-Federal sector who are involved in section 7 procedures; and
- (4) Providing for conservation of federally listed, proposed, and candidate species.

Within the Fish and Wildlife Service Manual we incorporate the handbook by reference into chapter I, part 734.

**Public Comments Addressed**

We published the notice of Availability of a draft consultation handbook in the **Federal Register** on December 21, 1994 (59 FR 65781). The Services considered all information and recommendations from comments submitted on the draft handbook. Our analysis follows.

*Issue #1:* Many commenters requested that certain terms used in the handbook be defined. Some commenters questioned the clarity or accuracy of specific definitions.

*Response:* The Services reviewed all the terms mentioned in comment letters. We improved definitions as necessary and new definitions were added. These were taken from the Act or regulations, if available. If not available in those documents, we defined terms by common usage and practice developed over 20 years of section 7 implementation. To further assist handbook users, we added an expanded glossary with all the definitions to the handbook. As terms are used in the text, we repeated the definitions and revised the glossary in Appendix E (FWS Intra-Service Consultation Handbook).

*Issue #2:* Several commenters requested clarification and further discussion of the relationship between processes relating to section 7 and section 10 of the Act.

*Response:* The handbook addresses procedures to be used in conducting section 7 consultations on the issuance of section 10 permits. The Services have also jointly produced (November 1996) a final handbook entitled Endangered Species Habitat Conservation Planning Handbook on the processing of

applications for section 10 "incidental take" permits. The Habitat Conservation Planning Handbook is available from the U.S. Fish and Wildlife Service, Division of Endangered Species, 1849 C Street, NW (Mail Stop 420 Arlington Square), Washington, DC 20240, or from the Endangered Species Division, National Marine Fisheries Service, 1315 East-West Highway (PR-3), Silver Spring, MD 20910.

*Issue #3:* Commenters on the FWS Intra-Service Consultation Handbook were concerned with the requirement that candidate species be addressed as though they are proposed for listing and that this infringes on the authorities of States to manage non-listed species.

*Response:* The FWS Intra-Service Consultation Handbook clarifies that the need to address candidate species (species for which FWS has adequate information to propose listing) applies only to consultations that are being conducted on actions that the FWS is authorizing, funding, or carrying out. FWS has implemented this internal policy to assist in the conservation of candidate species and to ensure that actions taken by FWS will not be a factor in the necessity to list candidate species in the future. FWS staff will bear any additional workload required to address candidate species in conducting the internal FWS section 7 consultation, so no burden will be placed on the States. FWS recognizes that the States have the lead for addressing the needs of non-listed species and desires to work closely with the States in developing conservation plans for candidate species.

*Issue #4:* Commenters stated that the handbook should provide a better discussion of how the section 7 process interfaces with other laws, particularly the National Environmental Policy Act (NEPA), and should address ways of streamlining the consultation process.

*Response:* A section has been added to the handbook on coordination with other environmental reviews which addresses how the NEPA and the section 7 processes can be undertaken simultaneously to minimize the need for extended consultation time frames. A section has also been added to the handbook which outlines streamlined consultation processes which are currently ongoing between the Services and other agencies on various programs, and encourages the Services to look for ways to implement such processes for other existing programs.

*Issue #5:* Commenters requested that the handbook clarify the role and authority of Federal agencies in the section 7 process, and also clarify the involvement of State agencies, Tribal

governments, and other non-federal parties, especially applicants for Federal permits or funds.

*Response:* The Services have revised the handbook to better recognize the authority of Federal action agencies and to stress that the Services will work cooperatively with these agencies during consultation, particularly in developing the scope of the proposed action, identifying adverse effects to listed species, developing reasonable and prudent alternatives to avoid jeopardy, and developing reasonable and prudent measures to minimize the impacts of incidental take. The Services acknowledge that the action agency can best judge if an action is technologically feasible and within their authority to carry out.

In addition, the Services have revised the handbook to encourage the inclusion of State and Tribal governments in the consultation process. State and Tribal governments, as managers of land and wildlife resources, often have information and expertise available which is important to the consultation. The Services are committed to notifying affected State and Tribal governments of ongoing consultations, and requesting that they supply any information pertinent to the consultation. While the Services recognize that it is the decision of the Federal action agency to include these governmental agencies in the formal consultation process, we will encourage Federal agencies to do so. Likewise, we will encourage the action agency to include entities such as local governments and outside interest groups.

*Issue #6:* Commenters requested that the handbook provide more specific guidance and examples on a number of issues, including the difference between a "may affect" and "not likely to adversely affect" determination, procedures to follow when projects have beneficial effects, clarification of timeframes and procedures for the various types of consultations, and the discussion of consultations on ongoing water projects.

*Response:* The Services have added language and examples, where appropriate, to clarify all section 7 processes that commenters questioned. We provided new flow charts for Informal, Formal, Early, and Emergency Consultation processes, and for Conference processes. Appendix C includes recent examples of various types of consultations. The handbook is approximately 850 double-sided pages in length.

### Summary of Streamlining Measures

The Services have made numerous reforms in the consultation handbook to encourage better coordination, shortened consultation timeframes, and streamlined consultation processes. Improvements include:

1. Clear guidance and standards for all aspects of the consultation program.
2. Incorporating language and policies which encourage early coordination with all parties with an interest in the consultation, including other Federal agencies, applicants, State agencies, and Tribal governments.
3. Encouraging coordination with reviews conducted under other environmental statutes, including NEPA and the Fish and Wildlife Coordination Act.
4. Requiring the integration of section 7 consultation processes with section 10 requirements early in the process of Habitat Conservation Plan review and approval.
5. Establishing joint policies and procedures for FWS and NMFS.
6. Encouraging development of programmatic consultations and streamlined consultation processes. An example of these processes is the Memorandum of Agreement developed among the Services, the Forest Service, and the Bureau of Land Management to review projects developed under the Northwest Forest Plan.

### Questions on the Contents of the Handbook

Questions on the content of the handbook may be addressed to the FWS Regional Office nearest you, or to NMFS Headquarters.

*FWS Region 1: CA, HI, ID, ND, OR, WA, American Samoa, Commonwealth of the Northern Mariana Islands, Guam, and the Pacific Trust Territories*

Chief, Division of Consultation and Conservation Planning, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon 97232-4181; Telephone: (503) 231-6241; Fax: (503) 231-6243.

*FWS Region 2: AZ, NM, OK, TX*

Regional ESA Section 7 Coordinator, U.S. Fish and Wildlife Service, 500 Gold Avenue S.W., (P.O. Box 1306), Albuquerque, New Mexico 87103(-1306); Telephone: (505) 248-6653; Fax: (505) 248-6922.

*FWS Region 3: IA, IL, IN, MI, MN, MO, OH, WI*

Chief, Ecological Services Operations, U.S. Fish and Wildlife Service, B.H. Whipple Federal Building, 1 Federal

Drive, Fort Snelling, Minnesota 55111-4056; Telephone: (612) 713-5334; Fax: (612) 713-5292.

*FWS Region 4: AL, AR, FL, GA, KY, LA, MS, NC, PR, SC, TN, U.S. Virgin Islands*

Chief, Ecological Services, U.S. Fish and Wildlife Service, 1875 Century Blvd., Atlanta, Georgia 30345; Telephone: (404) 679-4156; Fax: (404) 679-7081.

*FWS Region 5: CT, DC, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT, WV*

Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035-9589; Telephone: (413) 253-8615; Fax: (413) 253-8482.

*FWS Region 6: CO, KS, MT, NE, ND, SD, UT, WY*

Regional ESA Section 7 Coordinator, U.S. Fish and Wildlife Service, Street Address: Lake Plaza North Building, 134 Union Blvd., 4th Floor, Lakewood, Colorado 80228; Telephone: (303) 236-7400; Fax: (303) 236-0027. Mailing Address: Denver Federal Center, P.O. Box 25486, Denver, Colorado 80225.

*FWS Region 7: AK*

Regional Endangered Species Coordinator, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503; Telephone: (907) 786-3505; Fax: (907) 786-3350.

*NMFS Headquarters Office*

National Section 7 Coordinator, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, PR 3, Silver Spring, Maryland 20910; Telephone: (301) 713-1401 x 174; Fax: (301) 713-0376.

### Where To Obtain a Copy of the Consultation Handbook

You may purchase copies of the handbook through the Superintendent of Documents at the U.S. Government Printing Office (GPO) for \$55.00. The GPO stock number for the handbook is 024-010-00718-4. Contact the Superintendent of Documents order desk at (202) 512-1800 for further information. You may find the GPO order form on the Internet at GPO's Sales Product Catalog site located at: [http://www.access.gpo.gov/su\\_docs/sale/prf/prf.html](http://www.access.gpo.gov/su_docs/sale/prf/prf.html).

### National Environmental Policy Act

The Department of the Interior has determined that the issuance of the consultation handbook is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM2,

Appendix 1.10 and 516 DM 6, Appendix 1.4A(3).

#### Author/Editor

The editors of this document were Susan Linner and Mary Klee, U.S. Fish and Wildlife Service, Division of Endangered Species, Arlington, Virginia, and Margaret Lorenz, Endangered Species Division, National Marine Fisheries Service, Silver Spring, Maryland.

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 29, 1999.

#### Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

Dated: May 17, 1999.

#### Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99-14686 Filed 6-9-99; 8:45 am]

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### DEPARTMENT OF THE INTERIOR

#### Bureau of Land Management

[AK-963-1410-00-P and AA-6686-0]

#### Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Kijik Corporation for 581.41 acres. The lands involved are in the vicinity of Nondalton, Alaska.

#### Seward Meridian, Alaska

T. 2 S., R. 33 W.,  
Sec. 25.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 (907) 271-5960.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 12, 1999 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the

Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

#### Katherine L. Flippen,

Land Law Examiner, Branch of State and Project Adjudication.

[FR Doc. 99-14696 Filed 6-9-99; 8:45 am]

BILLING CODE 4310-JA-P

### DEPARTMENT OF THE INTERIOR

#### Bureau of Land Management

[WY-920-1430-11; WYW 83359]

#### Public Land Order No. 7342; Modification and Partial Revocation of 12 Secretarial Orders; Wyoming; Correction

AGENCY: Bureau of land management, Interior.

ACTION: Public land order; Correction.

**SUMMARY:** The Bureau of Land Management, Wyoming published a public land order (PLO), in the **Federal Register** of June 18, 1998. The PLO contained incorrect legal descriptions. This document will correct those errors.

**EFFECTIVE DATE:** [Insert Date of Publication in **Federal Register**].

**FOR FURTHER INFORMATION CONTACT:** Jim Paugh, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307-775-6306.

#### Correction

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows: The land description in Public Land Order No. 7342, 63 FR 33389, June 18, 1998, page 33389, column 3, line 42, T. 14 N., R. 98 W., Sec. 15, which reads "SE $\frac{1}{4}$ E $\frac{1}{4}$ ;" is hereby corrected to read "SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;" On page 33390, column 1, line 47, under T. 20 N., R. 105 W., which reads "Sec. 21, E $\frac{1}{2}$ ;" is hereby corrected to read "Sec. 20, E $\frac{1}{2}$ ;"

Dated: June 4, 1999.

#### Jim Paugh,

Realty Officer.

[FR Doc. 99-14703 Filed 6-9-99; 8:45 am]

BILLING CODE 4310-22-M

### DEPARTMENT OF THE INTERIOR

#### Bureau of Land Management

[CO-935-1430-01; COC-62995]

#### Notice of Proposed Withdrawal; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

**SUMMARY:** The Secretary of the Interior proposes to withdraw approximately 165,000 acres of Federal lands and 6,400 acres of reserved Federal minerals to protect nationally significant scientific and cultural resource values, and the ecological diversity of the Yellow Jacket Canyon region of southwestern Colorado. This notice segregates the lands and minerals described below for up to 2 years from surface entry, mineral material sales, and mining. The lands will remain open to mineral leasing.

**FOR FURTHER INFORMATION CONTACT:** Mark Stiles, Southwest Center Manager, Bureau of Land Management, 2465 South Townsend, Montrose, Colorado 81401, 970-240-5300.

**SUPPLEMENTARY INFORMATION:** The purpose of the proposed withdrawal is to protect the nationally significant scientific and cultural resource values and the ecological diversity of the Yellow Jacket Canyon area while the lands are under study for additional protection through some form of special designation. The area represents the focus of northern Anasazi development, with more than 100 sites per square mile in many areas, representing the highest known archaeological site density of any area in the nation. The total number of sites on public lands within the area is estimated at nearly 20,000. In 1985, the Bureau of Land Management's Resource Management Plan for the San Juan/San Miguel Planning Area designated the area as the Anasazi Culture Multiple Use Area of Critical Environmental Concern (ACEC) in recognition of the tremendous cultural values present.

Approximately 90 percent of the land proposed for withdrawal is currently leased for oil and gas under the Mineral Leasing Act of 1920. Approximately 74 producing oil, gas, and carbon dioxide wells maintain these leases. The temporary segregation and subsequent withdrawal would not affect existing mineral leases or any of the associated facilities or authorizations currently in place, nor would it affect the ability of the Bureau of Land Management to authorize actions typically associated with oil and gas development (such as