United States Department of the Interior

FISH AND WILDLIFE SERVICE

In Reply Refer To:
FWS/AES/DCC/061995

AUG 2 2 2016

Memorandum

To: Regional Directors, 1-8

From: Deputy Director James W. Kurth

Subject: Peer Review Process

To improve the implementation of the Endangered Species Act (ESA), this memorandum serves to update and clarify U.S. Fish and Wildlife Service (Service) policy regarding the role of peer review of listing and recovery actions (as defined below) under the ESA of 1973, as amended and to establish a consistent and rigorous practice of undertaking and managing peer review.

Following the 1994 Peer Review Policy (59 FR 34270; July 1, 1994), it is the Service's policy to incorporate independent peer review in listing and recovery actions. We also adhere to guidance established by the 2004 Office of Management and Budget (OMB) Information Quality Act Guidelines: https://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2005/m05-03.pdf. The bulletin includes guidance to Federal agencies on what information is subject to peer review; the selection of appropriate peer reviewers; opportunities for public participation; and related issues. We will continue to follow those existing guidelines in addition to all standards set forth in this document.

It is the Service's policy to incorporate independent peer review of listings, reclassifications and delisting determinations; critical habitat designations; and draft recovery plans in the following manner:

(A) The Service will solicit the review of, and comment on, such ESA listing and recovery actions from three or more objective and independent reviewers with expertise and/or experience relevant to the scientific questions and determinations addressed in our actions. In rare cases, a Service employee may be a valuable scientific expert on the subject matter and may be used as a peer reviewer provided that the employee is independent of the Service program that generated the action subject to peer review. In those cases, we will still solicit peer review from at least three other experts as well. At a minimum, we will solicit from these expert reviewers their opinions as to whether:

(1) We have assembled and considered the best available scientific and commercial information relevant to our decision;
(2) Our analysis of this information is correct and properly applied to our decision; and
(3) Our scientific conclusions are reasonable in light of that information.

(B.) The Service will summarize in the final decision document (rule, notice of withdrawal, or in the decisional file for final recovery plans) the opinions of all independent peer reviewers received on the species under consideration. Our general practice will be to post on the website, Regulations.gov, copies of the complete review provided by the independent peer reviewers of our action, which will include name and affiliation. However, in exceptional cases where the security of peer reviewers is a concern due to controversy surrounding an issue, we will consider requests to refrain from attributing specific comments to individual peer reviewers. In addition, we will post all reports, opinions, and other data provided by peer reviewers on Regulations.gov and in the decisional file of the final decision.

Peer Review Selection Process:

(A) The Service will implement the following procedures to help ensure that the opinions of objective and unbiased expert peer reviewers are solicited by parties independent from the authors of the document subject to review (consistent with procedures outlined in the OMB guidelines):

(1) Require that each reviewer submit a conflict of interest form that will be posted along with the peer review plan on the Service's Science Excellence website https://www.fws.gov/science/ and make available to the public. We will carefully assess any potential conflict of interest or bias by closely examining prospective reviewers' financial and business relationships and consulting arrangements, using applicable standards issued by the Office of Government Ethics and the prevailing practices of the National Academy of Sciences http://www.nationalacademies.org/coi/index.html. Divulging a conflict does not invalidate the comments of the reviewer; however, it will allow for transparency to the public regarding the reviewer's possible biases or associations. If we receive comments from a reviewer that we deem to have a substantial conflict of interest, we will evaluate the comments in light of those conflicts, and may choose not to give weight to those comments if the conflict is viewed as problematic.

(2) Ensure independence in the selection of peer reviews by having a different office from the one that authored the document conduct peer reviewer selection and coordination via one of the following options:

(i) For listing determinations, peer reviewers may be selected by members from the Unified Listing Team that are not assigned to the listing determination or species status assessment in question; or in the case of recovery or reclassification documents, by the regional recovery coordinators. Selection of peer reviewers for foreign listing rulemakings will be done by the Headquarters office.

(ii) Peer reviewers may be selected by staff from a different field or Regional office not associated with the listing determination or recovery action in question.

3) In limited circumstances where the action has a high degree of complexity or is expected to be highly controversial, the Service should, as a general rule, contract out the peer review selection and coordination. The Unified Listing Team, recovery coordinators, or Headquarters staff, as applicable, will decide when an action is appropriate for an outside third party to manage the peer review process. The role of the Service staff, in this circumstance, is limited to framing the scope of the peer review for the contractor and ensuring that the contractor follows Service procedures, while remaining completely removed from the process of selecting the peer reviewers or coordinating the peer review process. In these circumstances, the contractor is responsible for managing the process of peer review; they are not the actual reviewers of the document. The Service has an existing Indefinite Deliverable Indefinite Quantity contract that can be used to facilitate contracting peer reviews; more information about this contract can be found at https://www.fws.gov/informationquality/peer_review/.

It is now standard practice of the Service to develop a "species status assessment" (SSA) as the scientific foundation to inform our subsequent listing determination and recovery plan. In accordance with the OMB Information Quality Act Guidelines "...agencies need not have further peer review conducted on information that has already been subjected to adequate peer review. In determining whether prior peer review is adequate, agencies shall give due consideration to the novelty and complexity of the science to be reviewed, the importance of the information to decision making, the extent of prior peer reviews, and the expected benefits and costs of additional review." As a standard rule, we will conduct peer review at the proposed stage of the rulemaking, unless a thorough and rigorous peer review was done on the information and analysis used in the species status assessment. The peer review may be conducted on the SSA, the proposed rule, or both documents. If the peer review conducted on a species status assessment meets the requirements of the Service and OMB guidelines, and there is no new substantive information that was relied upon in our listing or recovery action, then additional peer review of the proposed listing determination or draft recovery plan is not necessary. However, if our rulemaking or recovery plan relies on new substantive information that became available after the species status assessment document was written, a new peer review will be completed.

The direction provided by this memorandum applies to all offices and staff that prepare and review listing rulemakings and recovery plans. Thank you for your commitment to efficient and effective implementation of the ESA that satisfies high standards of scientific quality and integrity. If you have questions, please contact Mr. Gary Frazer, Assistant Director – Ecological Services, at (202) 208-4646.