

**2.1 Early Involvement.** Early Fish and Wildlife Service (Service) involvement with other agencies in project planning and National Environmental Policy Act (NEPA) scoping is necessary for achieving full consideration of fish and wildlife resource values and for resolving resource conflicts. When environmentally acceptable and unacceptable actions are identified early in the planning process, the need for subsequent intensive Service review of environmental documents and other project reviews is reduced and fewer project revisions are required late in the planning process. Early involvement can occur prior to scoping, during scoping, or as a cooperating agency.

**2.2 Cooperating Agencies.** Basic procedures for cooperating agencies are described in 40 CFR 1501.6. Service responsibilities for compliance with 40 CFR 1501.6 are described in 032 FW, 505 FW 1.6, and 516 DM 2.5.

- A. NEPA Regulations.** The Council on Environmental Quality's (CEQ) NEPA regulations point out two instances in which an agency may be requested to cooperate: jurisdiction by law or special expertise. The Department of the Interior's (DOI) Environmental Statement Memorandum No. ES84-3 lists Federal agencies with jurisdiction by law or special expertise on environmental quality issues (refer to Service NEPA Reference Handbook). If the Service has significant jurisdiction by law, CEQ's NEPA regulations state that the Service shall be a cooperating agency, if requested. Examples of significant jurisdiction by law include actions that may significantly affect lands and water administered under the National Wildlife Refuge System, or lands and waters administered as national fish hatcheries. The issuance of permits, consultation, or reporting requirements are not sufficient to be deemed significant jurisdiction by law, within the meaning of CEQ's NEPA regulations. If the Service does not have significant jurisdiction, but has special expertise on certain environmental issues (e.g., protection of wetlands, protection of threatened and endangered species), CEQ's NEPA regulations state that the Service may be a cooperating agency.
- B. Cooperating Agency Request.** The request to be a cooperating agency may involve technical assistance or review of early planning efforts, as is required in scoping, or the Service could be requested to develop specific information and/or to prepare analyses, including writing portions of an environmental impact statement (EIS). The level of commitment is negotiable, will be determined on a case-by-case basis, and may involve deliberations between the lead agency and the Service field office. When a major commitment of resources will be necessary, the Regional Director or designee should negotiate with the

lead agency or applicant for a transfer of funds. The lead agency still makes the final decision as to the content of its EIS. Exhibit 1 depicts the process for evaluating a request to be a cooperating agency.

- C. Negotiations.** The Service normally does not have the capability to develop basic data because of recommitted and limited staff resources. The Service can, however, provide available information, professional opinions, and technical assistance in conducting necessary studies. The Service should advise the lead agency that State fish and wildlife resource agencies are often capable of providing basic data. Agreed upon time limits in which the Service will provide studies and analyses should be established prior to being undertaken, and should be adhered to. The services of, and data available from, all Service divisions should be utilized as appropriate.
- D. Funding.** Action agencies with a continuing need for Service cooperation should be encouraged to make long-term commitments or supply needed funds and personnel. For example, scopes of work (SOW) for funds from the Corps of Engineers (Corps) and the Bureau of Reclamation (BR) describe the products to be delivered by the Service, deadlines for delivery, and the amount of funds for the Service. Funding and other issues may need to be negotiated annually between those agencies and Service field offices. As applicable, SOWs should include descriptions of the level of effort and funding necessary for adequate Service participation as a cooperating agency. This discussion of funding pertains only to Service participation as a cooperating agency. The costs of scoping participation and of reviewing and commenting on EISs are normally borne by the reviewing Federal agencies.
- E. Declinations.** The benefits of early coordination in another agency's planning cannot be over-emphasized. Such coordination encourages early resolution of fish and wildlife resource concerns, which may result in more environmentally acceptable actions. Careful assessment of the resources to be impacted and the magnitude and severity of potential impacts should be made before the Service declines a request to cooperate. If, however, the Service is precluded from cooperating due to other program commitments, or if a mutually satisfactory agreement as to the level of involvement (e.g., transfer of funds and/or personnel) cannot be reached, the Regional Director should notify the requesting lead agency as soon as possible in writing of the Service's intention not to be a cooperating agency.

### **2.3 Scoping.** Basic procedures are described in 40 CFR 1501.7.

- A. Scoping Process.** "Scoping" is defined in CEQ's NEPA regulations as "an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action." Potential alternatives should be described, if known. Scoping is a document design process for the NEPA document, not a

single event or meeting. Scoping ends with the issuance of the draft EIS. The Service should provide clear, concise and detailed comments on agency "notices of intents," to seek early resolution of important concerns on wetlands, endangered species, migratory birds, anadromous fish, and other resources. Thus, scoping is a crucial step in the early planning stage for the Service to identify fish and wildlife resource concerns and to define the depth to which such concerns should be addressed in an EIS.

- B. Initiation of Informal Scoping.** Conflicts should be addressed by the Service as soon as possible with the lead Federal agency. If possible, this should occur before formal scoping commences to better assure environmentally sensitive planning.
- C. Initiation of Formal Scoping.** Initiation of an agency's scoping process formally commences with Federal Register publication of a notice of intent (NOI) to prepare an EIS. CEQ's NEPA regulations intend for coordination to take place as fully as possible prior to release of a draft EIS. At a minimum, Service input into the scoping process and our responses to the NOI should indicate our general jurisdictional and/or environmental concerns, proposed resolutions, or our no objection to project implementation if it is determined there will be little or no impact on fish and wildlife resources. If the proposed action may affect any resources for which the Service has jurisdictional responsibility, the lead agency must be notified at this time and a process established for resolving any concerns. Replies to NOIs may be made directly to the lead agency by the project leader pursuant to 505 FW 1.6(B)(8).
- D. Service Participation in Scoping.**
- (1) Service personnel should normally attend scoping meetings. If attendance is precluded due to travel restrictions or other commitments, written Service comments from the field level should be provided in accordance with instructions in the scoping invitation or public notice.
  - (2) If the Service is aware that a proposed project may have potential, significant impacts on fish and wildlife resources under the jurisdiction of the Service (e.g., national wildlife refuges, endangered species), the Service field office should advise the sponsoring agency that the Service will be participating in the scoping process and may wish (or requests) to be a cooperating agency.
  - (3) Service participation in scoping should be coordinated with the appropriate State agencies with regard to the conservation of fish and wildlife resources of mutual interest.
  - (4) All Service reports and project recommendations must be provided to the lead agency to permit incorporation into project plans, including the draft EIS.

- (5) Service reports resulting from participation in the scoping process will be coordinated with other reports or compliance required by the Fish and Wildlife Coordination Act (FWCA), Endangered Species Act, and other laws.
- (6) Service input into scoping processes should be documented in EISs, and Service comments should point out any omissions or discrepancies in the use of this input. The Service NEPA Reference Handbook contains a sample Service comment letter to the lead Federal agency on its NOI to prepare an EIS.

## **2.4 Resolving Federal Agency Planning Inconsistencies.**

A. This section describes general guidance for resolving agency differences. For example, the Service may believe another agency's actions are inconsistent with CEQ's NEPA regulations. The Service may have clearly indicated to the agency that their proposed action is "major or significant," but the agency may have prepared an environmental assessment (EA) when the Service believes an EIS is required.

B. In instances such as these, the Service should make its concerns known to the agency formally in writing. To be effective, the Service's comments must emphasize substantive concerns and reference any previous attempts to resolve them. Service comments should describe the requirements of CEQ's NEPA regulations and, whenever appropriate, the agency's procedures for implementing these and other regulations. Most importantly, the Service should clearly state what the other agency must do to adequately address Service concerns.

C. Major differences on policy and procedural matters can be elevated to the Regional Director or Director for resolution. However, all coordination measures should be tried at the lower organizational levels prior to elevating an issue. If Service Regional and Washington Office efforts are unsuccessful in resolving a major issue, a letter summarizing the issues can be drafted to CEQ, in consultation with the Department's Office of Environmental Policy and Compliance, seeking their review and assistance in resolving the issue. This is not a formal referral under 40 CFR 1504, but a request for CEQ to review a matter of concern to the Service. CEQ's style for resolution generally involves bringing all involved Federal parties together to clearly and succinctly present their positions. CEQ would likely provide its recommendations to the agencies for resolving the issue(s), either informally or formally (in writing), depending on the circumstances.

Exhibit 1, Evaluating A Request To Cooperate, is available from the Division of Habitat Conservation (703) 358-2183.