



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

REPLY TO
ATTENTION OF

CECW-ZA

30 June, 2015

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS, CHIEFS,
OPERATIONS DIVISIONS

SUBJECT: Improving the Efficiency of Project Operations and Effectiveness of Endangered
Species Act Compliance for U.S. Army Corps of Engineers Projects

1. References.

a. Endangered Species Act Section 7(a) Federal Agency Actions and Consultations.
(1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to Section 4 of this Act.

b. Endangered Species Act Section 7(a) Federal Agency actions and Consultations.
(2) Section 7(a)(2) requires Federal agencies to consult with the Service to ensure that actions they fund, authorize, permit, or otherwise carry out will not jeopardize the continued existence of any listed species or adversely modify designated critical habitats.

c. Fact Sheet, USACE and Service Implement an Innovative Conservation Approach that Yields Success for Wildlife, U.S. Fish and Wildlife Service, September 2014.

d. Memorandum for all Counsel, HQ, Divisions, Districts, Centers, Labs & FOA offices, subject: ESA Guidance, dated 11 June 2013.

e. Memorandum for See Distribution, subject: Reissuance of the U.S. Army Corps of Engineers (Corps) Environmental Operating Principles, dated 7 August 2012.

2. Purpose. The purpose of this directive is to increase the environmental value of how the U.S. Army Corps of Engineers (USACE) operates existing Civil Works projects by conducting a holistic review of Endangered Species Act (ESA) Section 7(a)(1) and (2). Designing projects in ways that are compatible with the conservation needs of listed species and their ecosystems can be one of the most effective methods of ensuring an efficient Section 7 consultation process, as well as species' recovery.

3. Summary. The USACE operates, maintains, and manages a variety of projects throughout the Nation, often in a complex and inter-mixed natural and built environment that includes the potential to affect species listed as threatened or endangered under the ESA or to affect such species' habitats. The purposes of the ESA are to provide a means for conserving the ecosystems upon which endangered and threatened species depend by

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carrying out actions for the conservation of such species. The ESA directs all Federal agencies to participate in conserving these species. Specifically, Section 7 (a)(1) of the ESA charges Federal agencies to aid in the conservation of listed species, and Section 7 (a)(2) requires the agencies to ensure that their activities are not likely to jeopardize the continued existence of listed species or adversely modify designated critical habitats. The existence of threatened and endangered species (TES) can impose additional constraints and requirements on how USACE projects are operated and maintained, thus affecting USACE Operations and Maintenance (O&M) costs. Since the enactment of the ESA in 1973, USACE has primarily addressed the impact on TES from the ongoing O&M of its projects through compliance with the ESA Section 7(a)(2) requirement to ensure that our O&M activities will not jeopardize the continued existence of listed species or result in the destruction or adverse modification of designated critical habitat. However, recent experiences in the lower Mississippi River Valley indicate that proactive ESA actions under the authority of ESA Section 7 (a)(1) are available to USACE to enhance environmental outcomes at low O&M costs, but long-term potentially larger cost avoidance. Clear evidence indicates that there are opportunities to take a broader approach to our project requirements in ways that efficiently achieve our project purposes while creating additional environmental value and greater benefits to TES within our existing authority.

4. Requirement. Each MSC Commander is hereby directed to conduct a thorough review of existing completed projects operating by O&M funding, and identify all potential opportunities to accomplish our O&M responsibilities in ways that more proactively leverage the authorities provided under Section 7(a)(1), thus providing additional beneficial outcomes for TES. Section (7)(a)(1) does not create a new program or provide new authority, but Division and District Commanders can identify potential O&M programs or activities that would benefit from engaging our resource agency partners to facilitate a more proactive ESA compliance. By pursuing these opportunities, USACE will be able to develop conservation plans to improve future project-specific Section 7(a)(2) consultations. By 29 July 2015, Division Commanders will provide Headquarters Operations Division with the following information, which we intend to discuss in broad terms at the August 2015 Summer Leader Conference:

a. Identify any cases where Districts in your regions have developed a conservation plan under ESA Section 7(a)(1), and briefly describe any associated best practices that could inform the USACE on how best to apply Section 7 (a) (1) authorities;

b. Identify all operations or management activities for existing projects where Section 7(a)(1) opportunities may exist, and describe those possible opportunities; and

c. Discuss assistance you believe might be needed from Headquarters to enable carrying out ESA Section 7(a)(1) efforts.

5. Discussion. USACE remains committed to fulfilling its missions and conserving valuable natural resources by working within its Environmental Operating Principles, applying

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Engineering with Nature concepts, actively collaborating with agency partners to improve mission sustainability for USACE, complete cost-effective environmental compliance, and achieve optimal conservation outcomes for TES species. The Endangered Species Program of the U.S. Fish and Wildlife Service (USFWS) uses Section 7 tools in partnership with other Service programs and other Federal agencies to collaboratively solve conservation challenges, as well as create opportunities, using Section 7 consultations, to recover the ecosystems of listed species. Consultations also provide ways to implement recovery tasks by addressing threats to listed species that may result from Federal agency programs and activities. By developing TES conservation plans consistent with the intent of Section 7(a)(1) and proactively addressing the needs of TES and at-risk species, USACE can actively advance our environmental responsibilities, improve TES habitat and contribute to greater TES recovery. Over time, this more proactive approach is expected to lead to improved TES habitat and recovery at lower life cycle project O&M costs. In addition to providing guidance and support to your staff, I encourage you to engage your local USFWS offices to determine whether there is potential to successfully integrate this approach for operating USACE projects in your region. As you consider undertaking these efforts, it is important to ensure that we operate within our existing O&M authority for projects, and that conservation plans can be justified as an efficient means for operating our projects while meeting the TES responsibilities under ESA Section 7 (a) (1), because USACE does not have a general authority to implement species recovery plans.

6. A Model for Application of Section 7(a)(1) of the ESA. In 2013, USACE Mississippi Valley Division (MVD) and the USFWS Southeast Region broke new ground in the USACE Civil Works O&M program through collaborative development and implementation of a conservation plan contemplated by Section 7(a)(1) of ESA, for three listed species in the Lower Mississippi River as part of the Mississippi River and Tributaries Channel Improvement Program. In this case, the USACE Environmental Research Development Center (ERDC) and MVD conducted extensive scientific research with USFWS over nearly a decade to develop data related to TES of concern on the Lower Mississippi River. Once scientifically sound data were developed, MVD collaborated with a variety of stakeholders to develop a strategy for adjusting the operation of the Channel Improvement Program for the Lower Mississippi River in a manner that significantly benefited the TES at no additional cost to the Federal project, resulting in the USFWS recommendation to delist the Interior Least Tern. The enclosed fact sheet was developed by the USFWS in collaboration with USACE and outlines how the conservation plan for the Lower Mississippi River was successfully developed and implemented.

7. Conservation Plans for Threatened and Endangered Species. Conservation plans are contemplated by Section 7(a)(1) of ESA, which directs Federal agencies to use their authorities, in consultation with the Service, to carry out programs for the conservation of listed species. Conservation plans must serve dual purposes in order for the USACE O&M program to be able to develop and implement them under our existing authorities. The first purpose is to improve TES baselines (population and habitat) within the scope of USACE

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authorities and appropriations, thereby contributing to the conservation of all species within the affected habitats. The second is to allow USACE to take a broader, more comprehensive view of how our O&M activities can be undertaken to minimize impacts or to benefit the TES more than would be achieved through Section 7(a)(2) consultation alone. When these conservation plans reveal measures or strategies that can be implemented at a cost equal to or lower than current costs to achieve project requirements, while simultaneously contributing to species recovery, they should be submitted to the USFWS for consultation under Section 7(a)(2) and implemented under the existing O&M authority. In compliance with these authorities, you are encouraged and requested to work with your USFWS counterparts to:

(a) develop Section 7(a)(1) conservation plans for USACE operating projects that provide a net benefit for species conservation and where there is potential for more cost-effective conservation solutions to be integrated into the O&M of the project;

(b) integrate conservation planning into ongoing Section 7(a)(2) consultations for operating projects where appropriate;

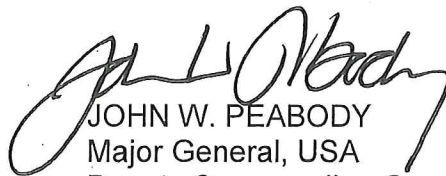
(c) document existing or planned conservation features or activities for operating projects; and

(d) document how implementation of the conservation plan will be cost-neutral or provide a cost-savings when compared to operating the project in a manner consistent with the requirements of a traditional 7(a)(2) biological opinion.

8. Points of Contact. Responses to information requested under paragraph 4 of this memorandum should be provided to Mr. Joe Wilson, CECW-CO, at Joseph.R.Wilson@usace.army.mil by 29 July 2015.

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Encl



JOHN W. PEABODY
Major General, USA
Deputy Commanding General
for Civil and Emergency Operations