



USFWS DECISION MEMORANDUM



DATE: August 14, 2025

TO: Brian R. Nesvik, Director, U.S. Fish and Wildlife Service

FROM: Gina Shultz, Acting Assistant Director – Ecological Services Program

SUBJECT: 082633: *FWS Response to Section 2(b) of Executive Order 14225 (Immediate Expansion of American Timber Production)*

I. DESCRIPTION OF ACTION

This package transmits for Acting Director’s approval the FWS’s response to section 2(b) of EO *Immediate Expansion of American Timber Production*

II. BACKGROUND

Section 2(b) of EO 14225 states that “Within 60 days of the date of this order, the Secretary of the Interior, through the Director of the United States Fish and Wildlife Service (FWS), and the Secretary of Commerce, through the Assistant Administrator for Fisheries, shall complete a strategy on USFS and BLM forest management projects under section 7 of the Endangered Species Act (ESA) (16 U.S.C. 1536) to improve the speed of approving forestry projects. The Secretary of the Interior, through the Director of the FWS, shall also examine any applicable existing authorities that would permit executive departments and agencies (agencies) to delegate consultation requirements under section 7 of the ESA to other agencies and, if necessary, provide a legislative proposal to ensure consultation is streamlined”.

In addition, the Assistant Secretary for Fish and Wildlife and Parks Action Plan for EO 14225 calls for the FWS to identify “existing and needed tools that streamline ESA compliance for forestry projects”.

FWS is providing a two-part response. Part 1 focuses on the Strategy, including tools that streamline ESA compliance. Part 2 examines applicable existing authorities.

The FWS’s draft Strategy was surnamed through Acting Assistant Secretary for Fish and Wildlife and Parks Lilly and is now ready for final approval.

III. POSITIONS OF AFFECTED STAKEHOLDERS

FWS’s Strategy was informed by review and input from NMFS, BLM, USFS, and FWS regions.

IV. TIMELINE/DEADLINE (IF ANY)

V. OTHER RELEVANT CONSIDERATIONS

EO 14225 also directs NMFS to complete an ESA section 7 strategy on USFS and BLM forest management projects, which they completed separately. NMFS and FWS coordinated to develop comparable strategies.

VI. OPTIONS

- 1. **Option 1: Approve the Strategy as written.**
- 2. **Option 2: Approve the Strategy pending additional edits.**
- 3. **Option n**

VII. DECISION

- 1. **Option 1**

APPROVED: **BRIAN NESVIK**  Digitally signed by BRIAN NESVIK
Date: 2025.08.21 12:45:09 -04'00' **DATE:** _____

- 2. **Option 2**

APPROVED: _____ **DATE:** _____

- 3. **Option n**

DENIED: _____ **DATE:** _____

Attachment

U.S. Fish and Wildlife Service

Strategy Implementing Executive Order 14225 Section 2(b)

Immediate Expansion of American Timber Production

Background:

Executive Order 14225 on the *Immediate Expansion of American Timber Production* states that “the Director of the [FWS]...shall complete a strategy on USFS and BLM forest management projects under section 7 of the Endangered Species Act (ESA)...to improve the speed of approving forestry projects” and “examine any applicable existing authorities that would permit executive departments and agencies (agencies) to delegate consultation requirements under section 7 of the ESA to other agencies and, if necessary, provide a legislative proposal to ensure consultation is streamlined.” In addition, our Action Plan for EO 14225 calls for the FWS to identify “existing and needed tools that streamline ESA compliance for forestry projects.”

The U.S. Fish and Wildlife Service’s (FWS) responses to these directives are below.

Part 1: Complete an ESA Section 7 Strategy on USFS and BLM Forest Management Projects

In coordination with USFS, BLM, and NMFS the FWS proposes to execute the following strategy to meet the directives of Section 2(b) of EO 14225.

1. Enhancement and Development of Programmatic Consultations

Programmatic section 7 consultations can achieve efficiencies for both the action agency and the FWS. A programmatic approach streamlines consultation procedures for broad agency programs or multiple similar, frequently occurring, or routine actions with predictable effects on listed species and/or critical habitat, thus reducing the amount of time spent on individual project-by-project consultations.

The BLM Action Plan (section 2(c) and 3) identifies the need for additional and enhanced programmatic consultation with FWS. Similarly, the USFS Implementation of Secretarial Memo 1078-006, identifies the need to use innovative and efficient approaches to comply with the ESA. Programmatic consultation products that streamline the consultation process for priority timber production, forest management, and wildfire risk reduction projects, would effectively meet the needs of the USFS, BLM, and FWS.

Under this strategy, the FWS proposes to inventory existing programmatic solutions, identify gaps where new programmatic solutions could be developed, and develop new innovative opportunities to optimize ESA consultation and achieve conservation outcomes. Specifically, the FWS would:

- a) Inventory existing programmatic consultations related to forest management and disseminate this information to FWS, BLM, and USFS practitioners to facilitate broader awareness and utilization.
- b) Coordinate with the USFS and BLM to determine which existing programmatic products to expand to include additional actions and geographic locations, and which new programmatic consultations should be developed. Gain support and resources to complete these actions, and issue joint interagency guidance that streamlines consultation procedures under these existing or new products.
- c) Identify actions and activities frequently utilized by USFS and BLM to conduct forestry projects and explore opportunities to leverage technology by using the FWS's [Information for Planning and Consultation system \(IPaC\)](#) to automate programmatic products and processes.
- d) Examine and expand the use of ESA section 10 streamlining tools such as general conservation plans, conservation benefit agreements, and habitat conservation plans (HCPs) that support voluntary conservation efforts by non-federal landowners. Explore opportunities to integrate ESA section 7(a)(2) consultations with the USFS and BLM in areas with approved or new HCPs, by including and covering their activities in the HCP and analyzing the effects of their actions in the intra-Service section 7 consultation.
- e) Coordinate with the USFS and BLM to (1) develop standardized conservation measures and survey protocols, (2) develop project design criteria, prioritizing those that provide conservation value to listed species while supporting project

implementation requirements, (3) find approaches that ensure consistency between plan-level and project-level consultations, and (4) identify species, types of timber projects, and geographic areas that often lead to conflict, and identify procedures to avoid these situations. (Consistent with BLM Action Plan for EO 14225 (Section 2b)).

- f) Assist the USFS and BLM in the development and implementation of ESA section 7(a)(1) conservation programs to reduce regulatory burdens, enhance operational flexibility, and expedite ESA section 7(a)(2) compliance for priority listed species affected by forest management. Identify where projects can meet both forest management and species recovery goals. Conduct generic/streamlined analyses and prepare and issue biological opinions in an abbreviated timeframe for those projects that provide restoration and recovery benefits for listed species, consistent with the FWS's Streamlined Consultation Guidance for Restoration/Recovery Projects.

2. Implement Interagency Coordination and Streamlining Consultation Procedures

Since the 1990s, the FWS, NMFS, USFS, BLM, and other federal agencies have developed agreements and processes to streamline and improve efficiency of the ESA section 7 consultation process, promote more predictable and faster project delivery, and attain better conservation outcomes for listed species.

Proven streamlining methods include the use of written procedures for interagency cooperation, meaningful early engagement at the project planning stage, and incorporation of existing information by reference. These procedures can establish hierarchical teams with specific roles and processes for early coordination and conflict resolution. Elements of these procedures can include Streamlined Consultation Teams (such as Level 1-3 Teams, Senior Managers, Technical Teams); Interagency Coordination (including annual workload planning); Streamlined Consultation Processes; Issue Elevation; and Annual Review.

These methods improve efficiency by reducing the likelihood of conflicts between listed species and proposed actions, and by promoting relationship building, trust, clear communications, and rapid issue elevation and resolution.

In addition, the ESA section 7 implementing regulations allow for incorporation of information by reference (402.12(g)) and for an optional collaborative process (402.14(h)(4)) that would further the ability of the FWS to adopt the information and analysis provided by the Federal agency to improve efficiency in the consultation process and reduce duplicative efforts.

The FWS proposes to work with the USFS and BLM to develop and implement, at appropriate scales, coordination and streamlining procedures that are tailored to timber production, forest management, and wildfire risk reduction projects. As appropriate, this may include updating and reissuing the interagency memo on "Endangered Species Act Section 7 Streamlining Guidance for Implementation of the Wildfire Crisis Strategy".

3. Prioritize, use, and expedite the development of Automated Permitting Tools

FWS proposes to prioritize the develop and use of existing and new automated permitting tools. Examples include:

- a) Increased use of IPaC to deliver automated letters of concurrence and “Likely to Adversely Affect” Technical Assistance letters for projects covered by existing programmatic consultations or standing analyses. These products help streamline consultations by automating steps in the consultation process and avoiding unnecessary duplication of information. (note: we are initiating the use of these tools for biological opinions, although this is new functionality that will need refinement.)
 - i. One way IPaC increases ESA section 7 consultation efficiency is through novel tools such as Determination Keys (DKeys). DKeys are logically structured sets of questions designed to deliver programmatic consultations more efficiently. DKeys help determine if a project qualifies under an existing programmatic ESA section 7 consultation or standing analysis and instantaneously deliver consultation documents (e.g., concurrence letters) for qualifying projects. DKeys provide consistent and transparent outcomes, and significantly reduce the time to complete consultation for qualifying projects. In the last 5 years, IPaC users generated over 115,000 documents using DKeys, and over half of these required no further action on the part of the FWS, Federal agency, or IPaC user. DKeys typically result in a final document in less than 30 minutes and all administrative logging for FWS project tracking is completed automatically, resulting in time and cost savings for the FWS, Federal Agencies, and project proponents.

Existing DKeys can be expanded to new areas. Additionally, existing programmatic products can be adapted to the DKey model. FWS is currently undertaking an effort to develop standing analyses and DKeys for low impact projects for all states in the Continental US, as well as Puerto Rico, the Virgin Islands, Northern Mariana Islands, and Guam. Since publication of EO 14225, we have incorporated consideration of timber production, forest management, and wildfire risk reduction projects in this effort.

- b) Exploring the development of Artificial Intelligence (AI) tools to expedite development of consultation documents, such as synthesizing scientific information, and generating draft consultation documents.
- c) Supporting the USFS and BLM in the development of ESA decision support tools to target locations prioritized for timber production, forest management, and/or wildfire risk reduction projects.
- d) Refining species range maps for species most likely to overlap with activities covered by EO 14225. These revised range maps will help ensure the USFS and BLM are consulting only when needed.

4. Emergency Consultations

To assist action agencies in meeting their permitting goals for timber production, forest management, and/or wildfire risk reduction projects, the FWS will:

- a) Ensure that staff are available to consult promptly with agencies and to take other appropriate action concerning the applicability of the ESA's emergency regulations.
- b) Consistent with 50 CFR 402.05 on Emergencies, work with the USFS and BLM to develop alternative consultation procedures that address the need to consult in an expedited manner to support emergency consultation requests on timber production, forest management, and wildfire risk reduction projects. FWS will also ensure these procedures are consistent, as appropriate, with procedures developed for projects implemented under EO 14156 Declaring a National Energy Emergency.
- c) Provide support to action agencies as they develop internal processes to utilize emergency consultation.
- d) Work with the USDA to support the Emergency Situation Determinations established in the Secretarial Memo 1078-006 i.
- e) Update IPaC to allow action agencies to request emergency consultation through the system. This will allow the FWS to instantaneously provide information on species and critical habitats that may occur in the area; where they exist, provide standard avoidance and minimization measures for those species; and track and report emergency consultation requests.

5. Support Tracking, Prioritization and Reporting

FWS will assist with tracking, prioritization and reporting for ESA consultations using the FWS's IPaC system and the ECOSphere platform. These tracking and reporting processes support:

- Section 4 of the EO 14225
- Section (4.e) USDA's Secretarial Memorandum 1078-006
- Section 3 of the BLM action plan

6. Agency and Industry Coordination, Training, and Outreach

FWS has a long history of collaborating with action agencies to provide coordination and training on ESA topics and have extended training opportunities to industry partners. Under this strategy, FWS plans to:

- a) Actively participate in USFS-led and BLM-led "interagency work groups" (IWGs), and assist the IWGs to develop and deploy pertinent ESA streamlining tools and associated trainings for timber production, forest management, wildfire risk reduction, and related projects.
- b) Repurpose and expand the FWS's Interagency ESA Solutions Team to focus on ESA implementation products relevant to timber production, forest management, and wildfire risk reduction projects. Product development would be coordinated closely with USFS and BLM to support their implementation strategies and identify innovative solutions as directed in the USFS Implementation of Secretarial Memo 1078-006 and the BLM's Action Plan.
- c) Develop and deliver trainings to FWS, USFS, and BLM practitioners on programmatic consultations, interagency coordination and streamlining consultation

- procedures, automated permitting tools, emergency consultations, and other relevant topics.
- d) FWS will be available to work with the USFS, BLM and local communities and states to develop and implement plans for priority projects, and support communication plans that incorporate community outreach objectives.

7. Maintain and expand staff capacity, repurpose existing Infrastructure and Investments Job Act (IIJA) forestry funding and staff, and update interagency agreements to advance the directives of EO 14225.

The FWS's ability to conduct efficient and legally defensible ESA regulatory actions for forestry projects fundamentally relies upon our staff's capability. A workforce of trained and capable biologists supporting the USFS's and BLM's forestry projects can be maintained through interagency agreements. The FWS, USFS, and NMFS established wildfire risk reduction agreements under sections 40803 (Wildfire Risk Reduction) and 40804 (Ecosystem Restoration) of the Infrastructure and Investments Jobs Act (IIJA) to promote efficient interagency cooperation and ESA compliance on wildland fuels management and forest health activities on National Forest System lands. The FWS has a similar agreement with DOI Office of Wildland Fire for activities on DOI lands. FWS staff supported by these agreements operate as a nationally coordinated team to address priority forestry projects seamlessly across offices and regional boundaries and engage in the development of technology that optimizes environmental review (ECOSphere and IPac). The USFS IIJA funding is currently paused by DOI and inaccessible to FWS offices. FWS proposes to repurpose the IIJA wildfire risk reduction efforts and funding to support staff that are focused on achieving the objectives and outcomes of EO 14225. In addition, the FWS proposes to update and continue these interagency agreements to maintain staff availability for ESA section 7 consultation on timber production, forest management, and wildfire risk reduction projects.

Further, this funding would support FWS in advancing:

- The U.S. Department of Agriculture's (USDA) Secretarial Memorandum 1078-006 (issued on April 3, 2025), employing the authorities and directives set forth in the IIJA section 40807 for Emergency Situation Determinations.
- The BLM's Action Plan (issued on Mar 31, 2025), specifically section 3 with respect to streamlining ESA implementation and serving on the Interagency Working Group (IWG) for BLM timber harvest actions.
- Section 3(c) under EO 14225 which directs the Secretary to ensure the FWS is available to consult promptly with agencies and to take other appropriate action concerning the applicability of the ESA's emergency regulations.
- Presidential Memorandum on *Updating Permitting Technology for the 21st Century*, April 15, 2025, which directs agencies to maximize the use of technology to accelerate environmental review and permitting processes, among other actions.

8. Support the Administration's efforts to work with Congress to provide for a permanent solution to the *Cottonwood* decision.

In *Cottonwood Environmental Law Center v. U.S. Forest Service*, 789 F.3d 1075 (9th Cir. 2015), *cert. denied*, 137 S. Ct. 293 (2016), the Ninth Circuit held that the USFS was required to reinstate consultation on certain forest management plans due to the designation of Canada lynx critical habitat. This issue has since been raised on multiple occasions with respect to land and resource management plans adopted by the USFS, as well as land use plans adopted by the BLM. Congress provided a partial fix through the Wildfire Suppression Funding and Forest Management Activities Act, H.R. 1625, Division O, which was included in the Omnibus Appropriations bill for fiscal year 2018.

In 2019, the FWS and NMFS codified the legislative fixes as part of the effort to revise the section 7 implementing regulations. Revisions to the regulations mirrored the legislative text, with the exception of extending the exemption from the need to reinstate consultation from BLM Oregon and California Railroad Revested Lands (i.e., O&C) lands to all BLM lands. Despite these revisions, the USFS and BLM continue to have concerns. In particular, the USFS has concerns regarding the time limitations on the “safe harbor” afforded through the legislation, and both agencies are concerned the exemption should also apply when new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered (*see* 50 CFR 402.16(a)(2)). In January 2021, the FWS and NMFS proposed to revise the regulations at 50 CFR 402.16 to address the USFS’s and BLM’s concerns. However, the revisions were never finalized, in part due to concerns the revisions would run afoul of legislation Congress passed in 2018. Although a number of legislative fixes have since been proposed (e.g., *Cottonwood* S. 1540, from 118th Congress and Forest Information Reform Act H.R. 200, from 118th Congress), none have been successful. The FWS is available to support the Administration’s efforts to work with Congress on a legislative solution.

Part 2: Examination of Applicable Existing Authorities that would Permit Agencies to Delegate ESA Section 7 Consultation Requirements, and Consideration of Whether a Legislative Proposal is Needed to Ensure Streamlined Consultation

The FWS conducted a review of current governing statutes and regulations and found one existing authority that could allow for delegation of certain ESA section 7 requirements.

CFR 50 402.04 Counterpart Regulation allows elements of the ESA section 7 consultation procedures to be superseded for a particular Federal agency by joint counterpart regulations, published in the *Federal Register*, among that agency, the FWS, and NMFS.

The Counterpart Regulations for Implementing the National Fire Plan (NFP) were finalized in 2003 to streamline consultation on proposed projects that support the NFP by providing an optional alternative to the routine section 7 consultation procedure. The NFP Counterpart Regulations permit an Action Agency to enter into an Alternative Consultation Agreement (ACA) with the FWS, which will allow the Action Agency to determine that a Fire Plan Project is “not likely to adversely affect (NLAA)” a listed species or designated critical habitat without formal or informal consultation with the Service or written concurrence from the Service. An NLAA determination for a Fire Plan Project made under an ACA completes the Action. This eliminates the need to conduct informal consultation and the requirement to obtain written concurrence from the FWS for those NFP actions that the action agency determines are “not likely to adversely affect” any listed species or designated critical habitat.

In 2011, the USFS conducted an internal review of their implementation of the NFP Counterpart Regulations and found very limited use due to many factors, including that existing consultation streamlining procedures were preferred, there was no overall project implementation time savings, and many line officers preferred traditional FWS/NMFS review and concurrence procedures. In a subsequent *Federal Register* notice in 2011, the USFS and BLM, in coordination with the FWS and NMFS, agreed to revoke the NFP Counterpart Regulation Alternative Consultation Agreements. In addition, in *Defenders of Wildlife v Salazar* (842 F. Supp. 2d 181 (D.D.C)), the DC District Court granted Plaintiffs' motion for reconsideration and remanded the NFP Counterpart Regulations back to the agency. Therefore, the *Defenders* decision would likely mean that the regulations would need to be amended through a rulemaking before they could be used, and any future rulemakings would need to address the issues raised in the *Defenders* decision.

Based upon this examination and in light of today’s available tools such as IPaC, the FWS recommends forgoing the use of counterpart regulations. Instead, the FWS should work with the USFS and BLM to develop programmatic consultations and standing analyses to be implemented using DKeys through IPaC. The FWS should also explore other streamlining opportunities with the USFS, BLM and others, such as the development of general conservation plans that accelerate the approval of USFS and BLM projects, regardless of land ownership. These efforts

will result in the same (or better) benefits as counterpart regulations, without the substantial effort, litigation risk, and controversy associated with promulgating regulations.¹

Per the Executive Order, the FWS also examined whether it is necessary to provide a legislative proposal to ensure efficient consultation. Based upon the above discussion and FWS's analysis in Part 1 of this memorandum, the FWS believes a legislative proposal is not needed at this time. Rather, the FWS recommends that ESA consultation on forestry and related projects can be streamlined by implementing programmatic consultations, interagency coordination and streamlining consultation procedures, and other elements of the Strategy proposed in Part 1.

CONCLUSION:

FWS is committed to working closely with USFS and BLM to support the successful implementation of EO 14225 and the conservation of threatened and endangered species and the ecosystems they depend upon.

¹ In a May 14-16, 2025, exchange of emails between Acting Director Souza and Gregory Wischer (Deputy Assistant Secretary for Land and Minerals Management), Mr. Wischer concurred with Mr. Souza's recommendation to forgo pursuing the use of counterpart regulations.