



United States Department of the Interior

FISH AND WILDLIFE SERVICE
[Fish and Wildlife Office address]

REPLY TO ATTENTION TO:

*** *NEEDS CORRECT LETTERHEAD & SPACING IN FINALIZATION*

Dear _____,

As you may be aware, the Council on Environmental Quality's Implementing Regulations for the National Environmental Policy Act require that third parties preparing an environmental Impact Statement (EIS) for a federal agency "shall execute a disclosure statement prepared by the lead agency... specifying that they no financial or other special interest in the outcome of the project" (40 *Code of Federal Regulation* 1505.5 (c)).

In an effort to meet this requirement, we are requesting the company official responsible for the preparation of the EIS for the [name of the HCP, SHA, or CCAA] Habitat Conservation Plan sign the following disclosure statement. Failure to sign the necessary disclosure statement may result in the U.S. Fish and Wildlife Service (Service) being unable to accept the EIS document for processing the project incidental take permit application.

In addition, if your company has been involved in developing initial data or plans for the project, on a separate sheet please state the scope and extent of this prior involvement. Such work in itself does not disqualify your company from preparing the EIS, but must be disclosed.

Also, in order to address issues with an incidental take permit Applicant paying for the preparation of the EIS, we have developed a Statement of Responsibilities (Agreement). We believe this Agreement clearly describes the roles and responsibilities of the Service, [NOAA, Fisheries], [the Applicant], and your firm in regards to EIS preparation. ***[Optional paragraph, use only if using the Statement of Responsibilities]***

If you have questions regarding this letter, the disclosure statement, or the Agreement please contact _____, of my staff, at _____.

Sincerely,

[FS, DFS, AFS, etc]

Attachments (2)

DISCLOSURE STATEMENT

for *[Consulting firm]* concerning the preparation of the EIS
for the *[Applicant name or name of HCP]* HCP

I, *[responsible official]*, of *[Consulting firm]* have made inquiry and to the best of my knowledge and belief declare that executing the contracted work of preparing the Environmental Impact Statement (EIS) for the *[name of HCP]* Habitat Conservation Plan does not represent an actual or potential conflict of interest and *[Consulting firm]* does not have any financial or other interest in the outcome of this project.

I understand the term “conflict of interest” to mean that because of other activities or relationships with other persons, the contractor is unable or potentially unable to render impartial assistance or advice to the Government, or the contractor’s objectivity in performing the contract work is or might be otherwise impaired, or the contractor may have an unfair competitive advantage. I understand the phrase “no financial or other special interest in the outcome of the project” to include any financial benefits such as a promise of future construction or design work on the project, as well as indirect benefits the consultant is aware of other than the enhancement of the contractor’s professional reputation.

Signed: _____
[name]

Employers name: _____

Address: _____

Phone number: _____

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Reviewed by USDI Solicitors and NOAA General Counsel in CA

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Approved modifications: change NOAA Fisheries to a lead agency; remove NOAA Fisheries from the Agreement; add in State process

STATEMENT OF RESPONSIBILITIES REGARDING PREPARATION OF EIS FOR THE *[Applicant(s) Name or Name of]* HCP

A. Purpose

1. THIS STATEMENT OF RESPONSIBILITIES (Agreement) is between *[Applicant(s) Name and statute(s) under which the applicant is organized and operates, e.g., a public agency existing under and by virtue of statutes of the State of ...]*, hereinafter referred to as “_____”, the National Marine Fisheries Service “NOAA Fisheries,” the United States Fish and Wildlife Service “USFWS” and *[Consulting Firm]*, hereinafter referred to as “Contractor.” The *[Applicant]* and USFWS, are hereinafter referred to collectively as the “Lead Agencies.” NOAA Fisheries is a Cooperating Agency.

2. The *[Applicant(s)]* is developing a Habitat Conservation Plan in *[name of project or planning area, and County]* and intends to apply to the USFWS and NOAA Fisheries for permits under Section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (ESA).

3. The USFWS and NOAA Fisheries have determined that an Environment Impact Statement (EIS) must be prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) (NEPA). This process is necessary prior to making a decision on the Section 10 permit action for the *[Name of HCP]*, in accordance with 50 CFR parts 13, 17.22, 17.32, and 222.307. The EIS must comply with all provisions of NEPA and all implementing regulations for both federal agencies.

4. An EIS can be prepared by the USFWS and NOAA Fisheries or a consultant acting under the direction of the USFWS and NOAA Fisheries in accordance with 40 CFR 1506.5(c) and 516 DM 6, Appendix 1.3. When a consultant prepares an EIS, the consultant shall prepare a disclosure statement for inclusion in the draft and final EIS to ensure the avoidance of any conflict of interest.

5. The Contractor reports directly to the *[Division Chief, or Asst Field Supv, etc]* of USFWS in the *[name of FWO]*, and the Supervisor, Protected Resources Division, *[name of office]* of NOAA Fisheries. The requirements of 40 CFR 1506.5(c) relating to conflicts of interest must be followed.

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6. The Lead Agencies require services for the preparation of the *[Name of HCP]* HCP EIS; and the Contractor is willing to perform these services pursuant to the terms and conditions set out in this Agreement.

7. It is the purpose of this Agreement to establish an understanding between the parties regarding the procedures to be followed and the responsibilities of the parties in the preparation of the EIS.

B. Requirements for Preparation of the EIS

1. *General Requirements.* A number of requirements are set forth in 40 CFR 1500-1508, Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA relating to USFWS and NOAA Fisheries compliance with NEPA for their own actions. Additional requirements are set forth in 516 DM 1-6, Department of the Interior's (Departmental) Manual, 032 FW 5, Fish and Wildlife Service Manual, and 550 FW 1-2, relating to USFWS compliance with NEPA for its own actions, including the preparation of a joint permit EIS by a consultant chosen by the Lead Agencies, and in the Department of Commerce (DOC) Department Administrative Order (DOA) 216-6 Implementing the National Environmental Policy Act and NOAA Administrative Order (NAO) 216-6 Environmental Review Procedures for Implementing NEPA relating to NOAA Fisheries compliance with NEPA. The parties agree to satisfy each of these requirements as set forth below.

2. *Control of Contractor.* Contractor agrees to report directly to the USFWS and NOAA Fisheries concurrently, such that all are provided draft and final materials at the same time. Although the Consultant will be paid by Applicant (*[name of Applicant(s)]* in this case), Contractor is obligated to follow the directions of the USFWS and NOAA Fisheries in regards to NEPA. The USFWS and NOAA Fisheries shall make the final determination on the inclusion or deletion of any material in the EIS for purposes of satisfying NEPA requirements. The USFWS and NOAA Fisheries are ultimately responsible for assuring compliance with the requirements of NEPA. The *[Applicant(s)]* agrees to enter into an Agreement for Professional Services (Contractor Agreement) with the Contractor that is consistent with the terms of this Agreement. The Contractor Agreement will specify work tasks and deliverables to complete the EIS.

3. *Disclosure Statement.* Contractor cannot have a financial or economic interest in the outcome of the Project. Contractor agrees to execute the Disclosure Statement attached hereto as Attachment.

4. *Payment of Contractor.* *[Applicant(s)]* agrees to pay Contractor for all services rendered in the preparation of the EIS. Contractor agrees that the USFWS and NOAA Fisheries are not obligated in any manner to pay for the services rendered by Contractor in relation to the Project.

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The Lead Agencies will jointly authorize changes in the scope of work. The [Applicant(s)] will pay any additional costs for changes in the scope of work.

5. *Scope of EIS.* The general scope of the EIS will be determined through the scoping process. This scope may be amended from time to time in order to better satisfy the requirements under NEPA and their implementing regulations. Contractor will be responsible for organizing public meetings, compiling scoping comments and providing scoping updates to the Lead Agencies.

6. *Schedule of EIS Preparation.* The anticipated schedule for the preparation of the EIS will be set forth in coordination with all parties. The parties agree to use their best efforts to meet this schedule. The schedule may be revised from time to time as necessary to reflect changes in conditions and requirements.

7. *Draft EIS.* Contractor will have the primary responsibility for writing and revising the EIS at the direction of the Lead Agencies. The Lead Agencies will be given the opportunity to comment on and make changes to the EIS at agreed upon stages of its development and completion as set forth in the Schedule of EIS Preparation described in section (B)6 above. The requirements for production of the Administrative Drafts, Draft, and Final EIS and deliverables are specified in the Contractor Agreement. The Contractor will be responsible for providing sufficient copies of the documents on a timely basis to meet the Lead Agencies' circulation requirements. The USFWS and NOAA Fisheries will be responsible for filing the draft EIS with the Environmental Protection Agency (EPA) for publication of its Notice of Availability in the Federal Register.

8. *Public Meetings and Comments.* The Contractor will be responsible for compiling all public comments. Upon completion of the Draft EIS, the Contractor will be responsible for organizing any necessary public meetings and/or hearings. The Lead Agencies will receive all comments on the draft EIS resulting from public review and comment period(s), and will refer them to the Contractor for development of responses. The Contractor will be responsible for drafting initial responses to public comments.

9. *Final EIS.* After the close of the draft EIS review and comment period, the Lead Agencies will identify the issues and comments that will require response in the final EIS. The Lead Agencies will refer to Contractor these comments for analysis and reply. The Lead Agencies will determine the necessary modifications to the draft EIS. The Contractor will incorporate the comments, responses and modifications into the final EIS. The Lead Agencies will review the completed document and file the final EIS with EPA.

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10. *Decision.* Not less than 30 days after the final EIS is filed with the EPA, the USFWS and NOAA Fisheries will prepare a Record of Decision (ROD) and render a decision on the permit application

C. Termination and Modifications

1. This Agreement remains in effect until a decision is made on the Section 10(a)(1)(B) permit or until the permit requests are withdrawn.
2. Any party may terminate this Agreement at any time by giving written notice to the other parties.
3. This Agreement may be modified or amended only by written instrument signed by all of the parties hereto.

D. Notice

Any notice or communication that any party desires or is required to give to the others shall be in writing and be served personally or sent by first class mail, postage prepaid, addressed as follows:

APPLICANT: *[name]*
 [address]

USFWS: U.S. Fish and Wildlife Service
 [address]

NOAA Fisheries: National Marine Fisheries Service
 [address]

CONTRACTOR: *[name]*
 [address]

The parties have executed this Agreement on _____, 20___. If the Contractor is a corporation, documentation must be provided that the person signing below for the Contractor has the authority to do so.

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[APPLICANT(S)]

By: _____

[CONSULTING FIRM]

Contractor

By: _____

UNITED STATES FISH AND WILDLIFE SERVICE

By: _____

[Project Leader, Deputy, Assistant PL, etc.]

NATIONAL MARINE FISHERIES SERVICE

By: _____