

Southwest Strategy
Plaza Maya Building
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Albuquerque, NM 87102

SEP 18 1998

REGIONAL EXECUTIVE COMMITTEE MEMORANDUM

To: Nancy Kaufman, Regional Director, Fish and Wildlife Service
Eleanor Towns, Regional Forester, U.S. Forest Service
Wayne Nordwall, Area Director, Bureau of Indian Affairs - Phoenix Area Office
Elouise Chicarello, Acting Area Director, Bureau of Indian Affairs - Navajo Area Office
Rob Baracker, Area Director, Bureau of Indian Affairs - Albuquerque Area Office
Denise Meridith, Arizona State Director, Bureau of Land Management
Michelle Chavez, New Mexico State Director, Bureau of Land Management
Charles Calhoun, Upper Colorado Regional Director, Bureau of Reclamation
Bob Johnson, Lower Colorado Regional Director, Bureau of Reclamation
John King, Intermountain Region Deputy Regional Director, National Park Service
John Buffington, Western Regional Chief Biologist, U.S. Geological Survey/BRD
Ken Leiting, New Mexico State Director, Natural Resource Conservation Service
Mike Somerville, Arizona State Director, Natural Resource Conservation Service
Denver Burns, Rocky Mountain Research Station Director, U.S. Forest Service
Cindi Fleming, Regional Environmental Coordinator, Department of Defense, R9
Thom Rennie, Regional Environmental Coordinator, Department of Defense, R6
Felicia Marcus, Regional Administrator, Environmental Protection Agency, R9
Jerry Clifford, Acting Regional Administrator, Environmental Protection Agency, R6
Steve Anaya, New Mexico State Director, Rural Development
Alan Stephens, Arizona State Director, Rural Development
George Arredondo, State Executive Director, Arizona Farm Service Agency
Larry Burnett, State Executive Director, New Mexico Farm Service Agency

CC: Regional Implementation Team
National Staff Group
Section 7 Streamlining Work Group

From: Acting Executive Director, Southwest Strategy

Subject: Re-transmittal of Process to Address Near-Term Section 7 Consultation Workloads

REPLY DUE - OCTOBER 19, 1998

On August 4, 1998, I sent you a copy of the Section 7 Streamlining Work Group document. I am sending you another copy of the "Process to Address Near-Term Section 7 Consultation Workloads" to ensure that you receive the four attachments (A - D).

Regional Executive Committee, September 18, 1998

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I am also establishing a reply date of October 19, 1998, to this office. In that reply please submit 1) which of the 21 recommendations your agency will implement and how that will be done, and 2) identify those recommendations your agency will not implement with a brief explanation of why not. Additionally, the Southwest Strategy Office would appreciate a copy of any guidance or direction you choose to issue to your field offices concerning the attached near-term process. This information will provide important feedback to the Section 7 Streamlining Work Group and assist in the development of the long-term streamlined consultation process.

It is recommended that these near-term efficiencies be used until the long-term streamlining strategy, now in development, becomes established.

Thank you for ensuring that your field offices receive the entire package. Should you have any questions, please contact Sam Spiller, U.S. Fish and Wildlife Service, at (602) 640-2720 or me at (505) 346-2521.

Attachments (5)

A handwritten signature in black ink, appearing to be "Sam Spiller", written in a cursive style.

To: Regional Executives, Southwest Strategy Participating Agencies

From: Acting Executive Director, Southwest Strategy

Subject: Process to Address Near-Term Section 7 Consultation Workloads

The Endangered Species Act, Section 7 consultation workload was identified as an immediate concern for the Southwest Strategy. To address this issue, an interagency work group was formed to recommend methods for more efficiently completing Section 7 consultations through the remainder of 1998. These recommendations were approved by the Regional Executive Committee (see attachment: *Process to Address Near-Term Section 7 Consultation Workloads*). The first component of this process, a method for prioritizing the near-term Section 7 consultation workload, was transmitted to participating agencies on April 24, 1998.

The recommendations described in the attached document identify a variety of measures designed to assist agencies in completing Section 7 consultations. Some of the recommendations apply to specific agencies or circumstances, however, most of them can be used by all agencies. We request that agencies implement as many of these measures as possible. Full implementation will not only benefit the agency involved in a particular consultation, but will also provide cumulative benefits to all agencies involved in Endangered Species Act activities. Improving the timeliness, efficiency, and effectiveness of the consultation process will benefit all agencies and the publics they serve.

To help us track the implementation and effectiveness of the near-term process, please provide feedback on the recommendations your agency will implement and how that will be done. For example, will you appoint a liaison or designate staff to assist in developing guidance criteria or programmatic biological assessments? Please also identify those recommendations that your agency will not implement with a brief explanation of why not. The Southwest Strategy Office would appreciate a copy of any guidance or direction you choose to issue to your field offices concerning the attached process. This information will assist in developing the long-term streamlined consultation process.

Your support in implementing these measures is greatly appreciated. If you have any questions on this issue or wish to discuss this information, please contact Sam Spiller, U.S. Fish and Wildlife Service, at (602) 640-2720 or me at (505) 346-2521.

Attachment 1: *Process to Address Near-Term Section 7 Consultation Workloads*
cc: Regional Implementation Team



***PROCESS TO ADDRESS NEAR-TERM
SECTION 7 CONSULTATION WORKLOADS***

**APPROVED BY THE
REGIONAL EXECUTIVE COMMITTEE**

June 2, 1998

**PREPARED BY
SECTION 7 STREAMLINING ISSUE WORK GROUP**

PROCESS TO ADDRESS NEAR-TERM SECTION 7 CONSULTATION WORKLOADS

I. INTRODUCTION

The Section 7 Streamlining Issue Workgroup (IWG) was requested to develop methods for more efficiently handling the Endangered Species Act (ESA), Section 7 consultation workload until a long-term streamlined process can be implemented. The following are measures to address the near-term consultation workload. They are designed to improve communications between agencies during consultation, resolve issues, improve biological assessments/evaluations (BA/BEs) and biological opinions (BOs), and reduce the overall time required to complete consultations.

Agencies participating in the Southwest Strategy have acknowledged the need to work collaboratively to more effectively and efficiently manage resources in New Mexico and Arizona. As in any partnership, members must have a shared commitment to assist each other and be aware of the collective issues and workload. As with most issues, each agency can contribute to achieving greater effectiveness in completing the near-term Section 7 consultation workload. The recommendations presented below will require agencies to rigorously evaluate their role in the consultation process and identify ways to become part of the overall solution. The recommended near-term efficiencies address consultation activities through the end of FY98 unless a long-term process is implemented and proves to be effective prior to that time.

This proposal was developed as a package to address a variety of issues which affect the success of the consultation process. Each agency is encouraged to implement as many of these recommendations as possible to more efficiently complete the near-term consultation workload.

II. PRIORITIZING THE NEAR-TERM SECTION 7 CONSULTATION WORKLOAD

The Regional Executive Committee approved a process for prioritizing the near-term Section 7 consultation workload (recommendations 1-3). This process was transmitted in a memorandum dated April 24, 1998 (see Attachment A).

III. NEAR-TERM CONSULTATION EFFICIENCIES

A. Shared Objectives

We encourage the development of shared objectives. If we can agree on what level of service we want to provide to the resource and the publics we serve, we will have a basis for measuring our effectiveness in working together. We will also have a benchmark for determining when additional interagency funding and personnel commitment must be made to achieve our objectives. Addressing how much time a typical Section 7 concurrence or formal consultation should take to complete can serve as a measure of our ability to provide adequate service to the

resource base and our publics. Action agencies and the U.S. Fish and Wildlife Service (FWS) must be effective in the consultation process to succeed in achieving the objectives.

Recommendation (R4): Federal agencies should negotiate an identified service level for timely completion of informal and formal consultations. For example: In Arizona and New Mexico, action agencies and the FWS have a goal of completing informal consultations within 30 days and formal consultations within 90 days of receiving adequate BA/BEs and consultation requests for typical cases. Federal agencies should make the commitment to provide appropriate resources to achieve the shared objective. Complex consultations may require additional time and commitment of staff resources (see sections C.6. and D.) based on the anticipated workloads.

B. Improving the Quality of Biological Assessments and Evaluations

1. Completeness of BA/BEs

The IWG cannot overemphasize the importance of the need for all action agencies to pay closer attention to the content of BA/BEs. The submittal of complete BA/BEs by the action agencies to the FWS may be the greatest contribution to a streamlined Section 7 consultation process. Collaborative, up-front discussions with FWS should result in a complete BA/BE (see recommendation R9).

The IWG found that incomplete data in BA/BEs submitted to the FWS contribute to significant delays in the consultation process. When the FWS receives an incomplete BA/BE, the situation requires additional telephone conversations and written correspondence between agencies that cause delays in the consultation process. The consultation process can not move forward until the BA/BE is determined to be complete. The consultation “clock” will begin after receipt of the completed BA/BE. Unnecessary delays and additional work can be avoided with the preparation of complete BA/BEs by the action agencies. Complete BA/BEs must provide the information identified in Recommendation 5 (see R5, items a. - f. below). Complete BA/BEs must include data, rigorous analysis of those data concerning the species and its habitat, and a clear rationale for the determination of effect. It is incumbent upon the action agencies to submit complete BA/BEs and rectify any incomplete BA/BEs by providing the necessary information.

Recommendation (R5): The action agency should ensure that a complete BA/BE which contains the information listed below (and more fully described in Attachment B) is submitted to the FWS. No specific format is required, however all of the information below constitutes a complete BA/BE. Any effort an agency can take to make project and impact information more concise and specific will contribute to improved efficiencies and timeliness in the consultation.

- a. *Project Description (Who, What, When, Where, and How)
Include visual aids such as maps, photos, and/or videos of the project area. Provide a brief description of how the project fits into the “big picture.” Explain how the project*

relates to a larger context for the species, habitats, and similar projects.

- b. State what threatened, endangered, or proposed species may occur, have suitable but unoccupied habitat, or potential habitat in the project area. Focus the analysis on the species and life history attributes that are actually of concern in the project area. Narrow down the species list for the project area based on an understanding of the species, habitat requirements, and known species occurrence.*
- c. State whether or not surveys have been conducted for species that are known to occur or have suitable or potential habitat in the proposed project area.*
- d. Provide pertinent background information on the threatened, endangered, or proposed species in the project area.*
- e. State how the project will affect the threatened, endangered, or proposed species and any designated or proposed critical habitat that occurs in the project area. Use data collected from surveys, provide a thorough analysis of impacts and a clear rationale for the effects anticipated. Analysis should emphasize what is known about the species and habitat, even when project time lines do not accommodate on the ground assessments of habitat conditions and species occurrence. Should data be unavailable, the analysis will necessarily be more conservative in nature. The reader should be able to readily draw the same conclusions based on the data and analysis presented. Be sure to address direct, indirect and cumulative effects. If connected actions and cumulative effects are inadequately addressed in BA/BEs, then BOs have to be more conservative, restrictive, and general in terms and conditions statements than would otherwise be necessary.*
- f. Provide clear and concise logic that supports the determination of effect. The Federal action agency must make a determination of effect.*

*Recommendation (R6): Each agency should identify a Section 7 liaison to assist in resolving issues during the consultation process. The liaison will primarily serve as a point of contact for the FWS when deficiencies in BA/BEs cannot be readily resolved between the FWS biologist and the action agency. The liaison should also assist in resolving issues which may arise during other stages of the consultation period. A typical position to assume the role of a liaison would be the Regional or State level T&E species coordinator. Specialists in these types of positions often perform this role as part of their normal duties. However, designating such a specialist as a liaison would formalize his/her assistance in resolving issues and provide a consistent point of contact for the FWS. Agencies should be free to expand the role of the Section 7 liaison to fit their needs. In addition to the duties identified above, some action agencies **may** want the liaison to review all BA/BEs for adequacy before they are submitted to the FWS. The precise role and staffing of the liaison will be defined by the respective agency.*

Recommendation (R7): Give a high priority to training action agency personnel in the preparation of complete BA/BEs. An interagency team will be assigned to evaluate existing training, develop new courses if necessary, and deliver training programs to address these

needs. The team should initiate its work within 60 days of adoption of this recommendation and be prepared to deliver interagency training at the beginning of fiscal year 1999.

Recommendation (R8) : Action Agencies should include an electronic version of the BA/BE (in Word Perfect and/or ASCII text formats) along with the hard copy when transmitting the BA/BE to the FWS. This facilitates the development of a BO.

Recommendation (R9): Action agencies and FWS should meet early in the consultation process to achieve agreement on the information needed and the scale of the area to be assessed. When appropriate, the action agency and the FWS should enter into a consultation agreement early in the consultation process (Attachment C, example agreement), especially for complex or potentially controversial projects. The agreement should include identification of the pertinent, available data (e.g. agreed upon survey protocols).

2. Share data, analyses, and BOs among agencies

Agencies anticipate initiating a large number of consultations during 1998. There is an increasing bank of existing BA/BEs and BOs in New Mexico and Arizona that cover a wide variety of projects, localities, and species. These documents are a valuable source of information when developing BA/BEs for new projects. They have the potential to provide perspective on data needs, analyses of effects, and measures to reduce take. They can also contribute to needed consistency between offices and agencies, and assist in producing an improved BA/BE. All agencies should strive to share data.

Recommendation (R10): Where appropriate, agencies should ensure that proposed actions in BA/BEs are consistent with requirements specified in higher level BOs (e.g. site-specific project proposals described in BA/BEs are consistent with requirements in land use plan BOs). In addition to consistency with higher level documents, BA/BEs should incorporate information, recommendations, appropriate terms and conditions from plan level BOs. This approach will ensure consistency, save time, and reduce workload for the action agency and the FWS.

Recommendation (R11): Within 60 days of adoption of this recommendation, the FWS and action agencies should select representative BA/BEs and BOs for various localities, species, and actions that serve as a good source of information or examples.

3. Establish criteria for effects thresholds for particular activities and/or species

Jointly developed and agreed upon documents which facilitate Section 7 consultation can be extremely effective. For example, the February 13, 1998 "Grazing Guidance Criteria for Determining Preliminary Effects" has facilitated BA/BE preparation by the U.S. Forest Service (USFS). Benefits include focused, pertinent analysis, early clarification of risk to the species, and increased consistency between preparers and FWS personnel. Success stories can be found at Regional and project scales. The key is agreement between the action agency and the FWS on the risks and effects from a given action.

Recommendation (R12): Within 30 days of adoption of this recommendation, the FWS, USFS, and/or Bureau of Land Management (BLM) should determine whether it is appropriate to adopt the grazing guidance criteria and thresholds dated February 13, 1998 for use in other grazing-related consultations.

Recommendation (R13): Within 45 days of adoption of this recommendation, the FWS, USFS, and/or BLM should meet to determine how they will strategically address the grazing consultation workload.

Recommendation (R14): Within 60 days of adoption of this recommendation, the FWS and appropriate action agencies should establish interagency team(s) to add other species or aspects of their biology into the existing guidance criteria to facilitate analysis of effects and resultant determination of effects which can be agreed upon.

C. Consultation Efficiencies

1. Minimize effects of proposed actions

The purposes of the ESA are to “. . . provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such [species]” (Sec 2(b)). The ESA defines conservation in terms of species recovery so that the ESA listing or protection measures are no longer needed. To achieve these purposes, activities of Federal agencies ideally should be designed to contribute to recovery of listed species. If that is not possible, then the focus should be on designing the activity so that it will have no effect. If a “no effect” situation is not possible, the focus should be on designing the action to result in a “may affect, not likely to adversely affect” determination. Consultation on such actions can be concluded with a letter of concurrence, which is far more efficient than formal consultations which address adverse affects. As many actions as possible should be designed or modified to eliminate the need for formal consultation.

Recommendation (R15): Southwest agency leaders should reaffirm their commitment to recover species and avoid or minimize adverse effects, consistent with achieving the purposes of the ESA (as per Interagency MOU, 1994; see Attachment D).

2. Improve front-end coordination during informal consultation and BA/BE development.

Action agencies and the FWS are encouraged to conduct field tours and face-to-face communications early in the consultation process for projects that have a high degree of complexity or likelihood for disagreements. This approach can lead to sharing information and resolving disagreements in an efficient manner and expediting the consultation process.

3. Batching Consultations

Batching consultations is a process of aggregating several individual projects or activities into a single consultation. Efficiencies are gained by eliminating duplication in writing, reviewing, and coordination efforts. Batching should be considered for:

- similar actions/projects within a single agency
- similar actions/projects between two or more agencies
- miscellaneous actions in a common geographic area, or
- actions which impact the same species.

Batching near-term consultations (geographic, multi-agency, or variety of actions) should be done in a manner that does not unduly complicate or impede the consultation process. Action agencies are not being asked to hold on to projects and delay initiation of consultations in order to utilize batching. It is a process to more efficiently analyze and consult on multiple actions which are slated to occur either in close proximity or a similar time frame. Consultations for projects with BA/BEs near completion are not recommended for batching. However, new projects that are early in the consultation process should be reviewed for batching opportunities.

Recommendation (R16): Respective agencies should batch consultations for similar actions or multiple actions in a given geographic area whenever appropriate.

Examples of possible batching opportunities include:

- Fire Protection on the Urban Interface; USFS
- Fire Management Activities (e.g. fire planning, prescribed burns); USFS, BLM, National Park Service (NPS), Bureau of Indian Affairs (BIA)
- Vegetation Management Projects; USFS, BLM, others
- AMP/allotment grazing activities; USFS, BLM
- Levee Projects in the Middle Rio Grande; Corps of Engineers
- Clean Water Act-404 Permits; Corps of Engineers
- Military Training Routes (MTR's); Department of Defense, Federal Aviation Admin. (FAA)
- Highway Improvements; Federal Highway Administration
- Discharge Plans; Environmental Protection Agency (EPA)
- Water Contracts; Bureau of Reclamation (BOR)
- Miscellaneous Projects by Locality; all agencies

4. Programmatic Consultations

Programmatic consultations typically address broad programs or activities which are normally implemented over large geographic areas. This type of consultation usually addresses how actions will be implemented over time without necessarily identifying specific locations. Programmatic consultations can reduce the need for or assist in expediting subsequent project level consultations if designed to do so. This approach is viewed as a long-term efficiency which will be addressed in the long-term streamlining recommendations. However, there are projects planned for the near-term that are good candidates for using a programmatic consultation approach.

Recommendation (R17): Action agencies should review their anticipated near-term consultations for opportunities to conduct programmatic consultations. Implement programmatic consultations within and between agencies where feasible. The following are projects that should be considered for programmatic consultation.

Fire Management Activities - Collectively USFS, BLM, BIA, NPS, DOD, and FWS have identified approximately 48 projects that will require consultation. There will also be numerous fire related projects identified in subsequent years. These projects entail broad fire planning, prescribed burning, fuels management, and fire suppression activities. Programmatic consultations could be within one agency or between multiple agencies, cover a specific geographic area or several areas, and address a variety of fire program areas. Using a programmatic approach on a portion of the near-term consultations would achieve long-term efficiencies and defer some of the near-term consultation workload to a future period.

Other possibilities include administration of grazing activities, vegetation management activities, and a number of other projects (some of which have been listed in item C.3. Batching Consultations).

The recommendation to capture programmatic efficiencies must be tempered by time, personnel, and other constraints. It is not intended to slow down any project consultations. It does provide opportunities to gain efficiency and consistency in some circumstances.

Recommendation (R18): Within 45 days of adoption of this recommendation, form an interagency team to develop proposals that outline a strategy for conducting programmatic consultations on the fire management program.

5. Capture knowledge/products from existing teams

Many agencies have significant investments in interagency teams with an excellent knowledge base and good working relationships. This investment should be used, to the fullest extent possible, for processing future projects. An example would be to use the expertise of the interagency grazing team to help others doing third and fourth quarter grazing consultations through the process. Other examples of teams with significant knowledge and good working relationships include the peregrine falcon work group and the Southwest Bald Eagle Management Committee. The benefits from existing teams could be used in conjunction with the concepts identified in item 6 below.

6. Using Teams to Improve Section 7 Consultations

The IWG had substantial discussions on how to complete the anticipated near-term consultation workload. These discussions ranged from having the agency with the largest workload fix their problem to acknowledging that each agency's workload will affect all other Federal agencies. The IWG agreed we are all committed to helping each other. An agency's contribution to solving a problem should not necessarily be measured by their proportion of the workload at a given time. The contribution should be based on the skills needed to solve the problem in true boundaryless behavior.

Some of the benefits that can be expected from collaboration are as follows:

- Expanded pool of skills to address pulses in workload beyond base organization levels.
- Cross-training experiences for each member's workforce.

Improved working relationships among our employees.
Increased understanding and trust of each other's missions and expectations.
Increased information flow to improve Section 7 consultation.
Improved identification of emerging issues or matters needing attention at higher agency levels.
Addressing workload pulses without expending full time equivalents (FTEs) that are above an appropriate or sustainable base organization.

Large pulses of consultations create workloads which impact the time frames in which consultations can be completed. This also delays implementation of recovery actions and proactive approaches which would reduce future consultation workloads. These pulses result from numerous land use plans, litigation or special emphasis projects, and new and ongoing activities potentially affecting newly listed species and designated critical habitat. These workload pulses are expected to continue. Livestock grazing consultations are a specific example of a near-term workload pulse that will have a large impact on the overall consultation workload and processing capability in both Arizona and New Mexico.

Interagency teams are a tool to address large consultation workload pulses. Teams can be tailored to meet the requirements of any interagency situation. Interagency teams should be staffed by individuals who are knowledgeable of the species and resources involved, activities being proposed, and the Section 7 process. Team members must have a high level of expertise in the discipline they represent (e.g. fisheries, botany, mammals, hydrology, etc). In addition to technical expertise, a FWS representative can provide expertise on Section 7 and serve as a critical coordination link throughout the consultation process. All agencies and Tribes involved in the consultations should agree on the composition of the team for that individual assignment. Teams should have a manager to provide oversight and facilitate the process. Teams may also need additional skills such as clerical support familiar with the resource issue.

The interagency team presently facilitating consultation for on-going Forest Service livestock grazing activities appears to be extremely successful. Some of the major benefits seem to be in the area of: a) greater consistency in BA/BE quality, content, and effects analyses and determinations, b) recommendations to avoid or minimize effects, and c) recommendations to Forests which, if implemented, eliminated the need for formal consultation.

The following are examples of team approaches that Federal agencies in the Southwest could use to address workloads of various magnitudes and duration.

Dedicated Team: A team whose members have been relieved of other obligations to accomplish a large-scale mission of extended duration (typically less than six months duration).

Special Team: An interagency team selected to address specific assignments typically of short duration and narrow in scope. Membership on these teams will vary with the issue being addressed.

Standing Team: A team established to address special cases or workload pulses. This team would be activated, as needed, through requests to the Regional Executive Committee. Membership to address near-term issues should focus on experienced Section 7 biologists who work well with others.

Enterprise Team: A team representing a good cross-section of skills needed to handle a wide range of Section 7 consultations for Federal agencies and Tribes. These agency and tribal experts would be co-located to provide effective service over a wide geographic area. This team's services would be available to all agencies and Tribes through development of an interagency agreement or similar vehicle. Enterprise teams are viewed as a long-term tool.

Recommendation (R19): Action agencies and FWS should increase the use of teams to more efficiently address Section 7 consultations and related workloads. The Regional Implementation Team (RIT) can serve as a forum for coordinating consultation workloads and identifying skills and personnel to serve on consultation teams.

D. Staffing/Personnel

Large workload pulses that are of extended duration, such as 2-4 years, should be addressed with a more long-term commitment than a team composed of detailed personnel can provide. Dedicated FTEs are more appropriate to attain necessary skills, knowledge, and consistency in addressing issues lasting two to four years in duration. Intergovernmental Personnel Act (IPA) appointments could be considered if dedicated FTEs are not possible or are too limited to meet all staffing needs.

Future staffing and personnel requirements cannot be clearly identified from the information presently available to the IWG. Factors such as the present Section 7 consultation capability of FWS, the ability of FWS to prioritize Section 7 over other work priorities, the variability of Section 7 case-flow into the FWS, as well as the quality and complexity of that case-flow are examples of variables which are unknown to the IWG. The IWG recognizes that the FWS consultation biologists perform a myriad of other duties (including listing, candidate assessments, Habitat Conservation Plans, BO implementation, coordination, permit reviews, recovery, informal consultation prior to BA/BE submittal, federal projects, Section 6, etc.) in addition to Section 7 consultation. This is another reason why it may be appropriate for the FWS to consider adding more dedicated FTEs for consultations.

E. FWS Considerations

1. The FWS has the ability to adequately address the present numbers and complexity of BA/BEs in hand, however, immediate assistance could assist in completing the expected pulse of third and fourth quarter consultations.

Recommendation: (R20): While final decisions on BOs must be made by the FWS, detailers from the FWS or other Federal agencies should be made available as soon as possible to assist FWS Section 7 consultation biologists as appropriate.

In addition to Section 7 caseload assistance, these detailers can free FWS Section 7 biologists from such duties as Freedom of Information Act (FOIA), environmental impact statement review, and working with agencies to obtain information needed to complete FY98 BA/BE documents. Assistance could also be applied to other IWG efficiency recommendations such as identification of scales of analysis for species concerns or project types, developing focused analysis guidance for effects determinations, determining thresholds or other factors which would assist in BA/BE preparation and facilitate rapid BO development.

2. Heavy work loads and limited staff are factors in meeting consultation schedules.

Recommendation (R21): In order to minimize impacts to consultation schedules, the FWS should review how Section 7 consultations flow through their offices and eliminate inefficiencies.

Recommendation (R22): Other duties assigned to FWS consultation biologists that take time away from Section 7 consultation processing should be minimized or examined for efficiencies. For example, developing administrative records could be streamlined to reduce time spent on it; or the FOIA responsibilities could be assigned to others to minimize impacts to biologists completing consultations. Some of the routine questions which come in from the public could also be handled by others.

3. Currently the FWS reiterates information provided in documents submitted by action agencies. The IWG believes that there are benefits in reducing this type of duplication.

Recommendation (R23): The FWS should consider achieving efficiencies in processing concurrence letters and BOs. Presently, the project description, species of concern, permit stipulations, etc. are repeated by FWS in their cover letters, concurrence letters, or biological opinions. If the FWS accepts the BA/BE as accurate and complete, the BA/BE with appropriate consultation number could be cited, much as a scientific literature citation would be used, in place of the project description, species of concern, or other information which does not change. This would eliminate verbiage from the concurrence letter or BO that is found in the BA/BE. The information that could be eliminated in this manner is already known to the action agency. The FWS should document additional information or perspective in these sections, as needed.

Recommendation (R24): The FWS should consider developing a standard concurrence memorandum or letter. If the FWS is willing, the action agency could prepare such a letter, and submit it with the BA/BE. Rationale for the effects determination(s) should be included and/or cited in the concurrence letter. This approach would allow the FWS to reduce the time spent in preparing concurrence letters or memoranda.

IV. ACTION PLAN

The recommendations for near-term efficiency were designed to address immediate concerns for the FY98 program. The IWG will continue to develop these concepts and others into a long-term streamlining strategy.

These recommendations must be implemented quickly in order to achieve efficiency in completing the near-term consultation workload. Many of these recommendations can be implemented independently by the various agencies. Others will require a higher level of coordination and agreement between the agencies affected. A summary of recommendations designed to address the near-term Section 7 consultation workload is provided in Table 1.

V. SUMMARY

The recommendations identified in this proposal are designed to assist in successfully completing the consultation process. The recommendations encourage greater collaboration between agencies and resolution of issues early in the process. Implementation of these recommendations will result in higher quality documents, better resolution of issues, and improved management of T&E species and their habitats.

| TABLE 1. SUMMARY OF NEAR-TERM RECOMMENDATIONS | | | | |
|--|-------------|-------------------------------|-----------------------------------|--|
| Recommendation | Page | Who | When | How |
| II. PRIORITIZING THE NEAR-TERM SECTION 7 CONSULTATION WORKLOAD | | | | |
| R1-R3 form a process for prioritizing near-term Section 7 consultations which has been adopted by the Regional Executive Committee (see Attachment A). | | | | |
| III. NEAR-TERM EFFICIENCIES | | | | |
| Shared Objectives | | | | |
| R4 Develop shared objectives: (For example: Complete informal consultations within 30 days and formal consultations within 90 days after receipt of a complete BA/BE.) | pg. 3 | All Agencies | Immediate | |
| Improve BA/BEs | | | | |
| R5 Reinforce commitment to collaboration and ensuring that BA/BEs are complete in order to start the consultation "clock." | pg. 3 | Action Agencies | Immediate | Reinforce commitment to ensuring complete BA/BEs |
| R6 Provide a Section 7 liaison to assure FWS receives complete BA/BEs. | pg. 4 | All Agencies | Immediate | Identify a Liaison |
| R7 Train action agency personnel in preparation of complete BA/BEs. | pg. 4 | RIT Develops Interagency Team | w/in 60 days | Develop Training Program |
| R8 Submit electronic version of the BA/BE (WordPerfect and/or ASCII) along with hard copy. | pg. 5 | Action Agencies | As submitted on new consultations | Submit WordPerfect/ ASCII file to FWS |
| R9 Action agency and FWS reach agreement on critical aspects of the consultation.* | pg. 5 | All Agencies | As appropriate | Consultation Agreement |

| TABLE 1. SUMMARY OF NEAR-TERM RECOMMENDATIONS | | | | |
|---|-------------|--|---|--|
| Recommendation | Page | Who | When | How |
| R10 Ensure consistency with higher level plans (e.g. land use plans) and resultant BOs. | pg. 5 | Action Agencies | Developing new project proposals and BA/BEs, In concert w/ R2 above | Review higher level documents and BOs |
| R11 Select representative BA/BEs and BOs that serve as good examples. | pg. 5 | RIT Establish an Interagency Team | w/in 60 days | Compile Pertinent BA/BEs and BOs |
| R12 Decision as to whether to adopt Feb. 13, 1998 grazing guidance for other grazing consultations. | pg. 6 | Regional Executives of FWS, USFS, and/or BLM | w/in 30 days | Decision from USFS, FWS, and/or BLM |
| R13 Decision on strategic approach to grazing consultations. | pg. 6 | Regional Executives of FWS, USFS, and/or BLM | w/in 45 days | Decision from USFS, FWS, and/or BLM |
| R14 Develop guidance criteria for additional species and other activities. | pg. 6 | FWS/ interagency teams | w/in 60 days | Teams scope and dev. criteria for interagency agreement |
| Consultation Efficiencies | | | | |
| R15 Reaffirm commitment to recover species and avoid or minimize effects. | pg. 6 | Action Agency Regional Executives | Immediate | Improve design of proposed projects |
| R16 Investigate opportunities to batch consultations. | pg. 7 | Action Agencies | Immediate | Batch consultants as appropriate |
| R17 Investigate opportunities to conduct programmatic consultations. | pg. 7 | Action Agencies | Immediate | Identify opportunities |
| R18 Develop strategy for programmatic consultations on fire management program. | pg. 8 | Appropriate Action Agencies; RIT coordinate | w/in 45 days | Interagency team |
| R19 Use teams to better address Section 7 workload pulses. | pg. 10 | RIT coordinate | As Appropriate | Use dedicated, special, standing, and/or enterprise teams as appropriate |

| TABLE 1. SUMMARY OF NEAR-TERM RECOMMENDATIONS | | | | |
|---|-------------|----------------------|-------------|---|
| Recommendation | Page | Who | When | How |
| FWS Considerations | | | | |
| R20 Use detailers to assist FWS consultation biologists. | pg. 10 | All Agencies, FWS | see pg. 11 | Dedicated Team |
| R21 Review internal FWS administrative processes for handling consultations. | pg. 11 | FWS | Immediate | Internal review teams |
| R22 Reduce non-ESA duties from FWS consultation biologists. | pg. 11 | FWS, Action Agencies | Immediate | Provide assistance from other personnel |
| R23 Avoid repeating information available in BA/BEs through citations. | pg. 11 | FWS | Immediate | Cite information from BA/BEs in concurrence letters and BOs |
| R24 Use standardized concurrence letters (with adequate documentation of effects determinations). | pg. 11 | FWS | Immediate | Consider developing a standard letter and/or have action agencies provide a draft letter with BA/BE |

*Enter into consultation agreements for complex formal consultations.



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Forest Service

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SOUTHWEST STRATEGY
REGIONAL EXECUTIVE COMMITTEE MEMORANDUM

TO: Wayne Nordwall, Area Director, Bureau of Indian Affairs-Phoenix Area Office
Elouise Chicarello, Acting Area Director, Bureau of Indian Affairs-Navajo Area Office
Rob Baracker, Area Director, Bureau of Indian Affairs-Albuquerque Area Office
Denise Meridith, Arizona State Director, Bureau of Land Management
Michelle Chavez, New Mexico State Director, Bureau of Land Management
Charles Calhoun, Upper Colorado Regional Director, Bureau of Reclamation
Bob Johnson, Lower Colorado Regional Director, Bureau of Reclamation
John King, Intermountain Region Deputy Regional Director, National Park Service
John D. Buffington, Western Regional Chief Biologist, U.S. Geological Survey/BRD
Ken Leiting, New Mexico State Director, Natural Resource Conservation Service
Mike Somerville, Arizona State Director, Natural Resource Conservation Service
Denver Burns, Rocky Mountain Research Station Director, U.S. Forest Service
Cindi Fleming, Regional Environmental Coordinator, Department of Defense, R9
Thom Rennie, Regional Environmental Coordinator, Department of Defense, R6
Felicia Marcus, Regional Administrator, Environmental Protection Agency, R9
Jerry Clifford, Acting Regional Administrator, Environmental Protection Agency, R6
Steve Anaya, New Mexico State Director, Rural Development
Alan Stephens, Arizona State Director, Rural Development

CC: Regional Implementation Team
National Staff Group

FROM: Nancy Kaufman, Regional Executive Committee, Co-Chair
John Kirkpatrick, Regional Executive Committee, Co-Chair

SUBJ: Prioritizing the Near-Term Endangered Species Act, Section 7 Consultation Workload

DATE: April 24, 1998

The Endangered Species Act, Section 7 consultation workload was identified as an immediate concern for the Southwest Strategy. To address this issue, an interagency group was formed to recommend methods for more efficiently completing the Endangered Species Act, Section 7 consultations through the remainder of FY98. The first recommendation that the interagency

group developed is a process for prioritizing new consultation requests based on a set of discrete ranking criteria (Attachment 1: *Prioritizing the Near-Term Endangered Species Act, Section 7 Consultation Workload*).

On April 9, 1998, the Regional Executive Committee formally adopted the interagency workgroup's recommendation for prioritizing new Endangered Species Act, Section 7 consultation requests through the remainder of FY98. In order to assist in managing consultation workloads, the Regional Executive Committee requests that action agencies provide information on seven ranking criteria to the U.S. Fish and Wildlife Service (FWS). This data, along with the action agency's internal consultation rankings, will be used by the FWS to prioritize the consultation workload. However, when conditions warrant, the Regional Executive Committee may provide an interagency team to assist the FWS in establishing consultation workload priorities based on the ranking criteria. This process is a qualitative approach based on project specific circumstances and is not intended to serve as a mechanical score keeping system.

It is the recommendation of the Regional Executive Committee that action agencies:

- 1) Use the ranking criteria to establish internal consultation priorities.
- 2) Communicate their internal consultation priorities to the FWS when submitting requests for consultation.
- 3) Include a brief description of how only the applicable ranking criteria apply to the project. This should be done in a short and informative cover memo requesting consultation with the FWS.

The Regional Executive Committee also encourages all action agencies to manage their own consultation workload as a way to ensure that requests for consultation are submitted in a timely manner; that biological assessments/evaluations are complete; that early informal consultation is begun; and that anticipated increases in the consultation workload are communicated to FWS as soon as possible.

Your assistance in this process is greatly appreciated. In the near future, we will provide additional information on other consultation streamlining efficiencies designed to simplify and shorten the consultation process.

Should you have any questions on this issue or wish to discuss this information, please contact Susan MacMullin, U.S. Fish and Wildlife Service, Ecological Services at (505) 248-6671.

Attachment 1: Prioritizing the Near-Term Endangered Species Act, Section 7 Consultation Workload

Prioritizing the Near-Term Endangered Species Act, Section 7 Consultation Workload

Agencies participating in the Southwest Strategy established an interagency workgroup to address Endangered Species Act, Section 7 consultation issues. This workgroup, the *Section 7 Streamlining Issue Workgroup* (IWG), developed the following process for prioritizing the Endangered Species Act, Section 7 consultation workload through the remainder of FY98. The IWG used data provided by participating agencies as a basis for assessing the anticipated consultation workloads.

The IWG developed a series of ranking criteria to assist in establishing consultation workload priorities. Action agencies are asked to supply information on seven ranking criteria when submitting requests for consultation to the U.S. Fish and Wildlife Service (FWS). This data, along with internal consultation priorities from the action agency, will be used by the FWS in establishing the overall consultation workload priorities. The process is a qualitative approach based on project specific circumstances and is not intended as a mechanical score keeping system.

The ranking criteria are listed below. Please note that they are **not** listed in order of importance.

- **Human Health and Safety.** Describe potential human health or safety concerns associated with the project.
- **Species Risk Assessment.** Summarize the project's level of risk or impact to a species or its recovery.
- **Recovery and Restoration.** Describe how the project provides or promotes species recovery or ecosystem restoration.
- **Time and Funding Sensitive.** Identify critical timing and/or funding concerns. For example, time sensitive concerns may involve a limited window of opportunity (i.e. a runoff season, a burning season); funding concerns may involve the loss of funding availability if a project is not completed within a specified time frame. This criterion does not apply to consultation requests that are not submitted in a timely manner.
- **Program Efficiencies.** Identify programmatic or batching approaches being used for the consultation. Favorable consideration will be given to consultation requests implementing these sorts of efficiencies.
- **Litigation.** Identify how the proposed project fits into one of the three categories below:
 - a. *Litigation likely* - a high profile project that, if not consulted on in a timely fashion, is expected to result in litigation.
 - b. *Notice of intent to sue* - a letter of intent to sue has been received by the Federal agency.
 - c. *Active and ongoing litigation* - a case has been filed in a court of law.Include a brief statement describing how a project's litigation status may affect consultation time frames.
- **Other (agency must specify).** Identify high public visibility and social interest issues that are associated with the project (i.e. national security, tribal trust responsibilities).

Implementing the Prioritization Process

In order to effectively implement the prioritization process based on the ranking criteria described above, action agencies are requested to:

- 1) Manage their own consultation workload to ensure that (A) requests for consultation are submitted in a timely manner, (B) biological assessments/evaluations are complete, (C) early informal consultation is begun, and (D) anticipated increases in the consultation workload are communicated to FWS as soon as possible;
- 2) Use the ranking criteria to establish internal consultation priorities;
- 3) Communicate their internal consultation priorities to the FWS when submitting requests for consultation; and,
- 4) In a short cover memo requesting consultation with the FWS, include a description of how the applicable ranking criteria apply to the project. The description should be **brief, informative and only** address those criteria that apply to the project.

Additionally, the FWS is requested to:

- 1) Use data on the ranking criteria and agency priorities to develop overall priorities for the consultation workload;
- 2) Provide feedback to the Southwest Strategy Regional Implementation Team on how the prioritization process is working; and,
- 3) Communicate consultation workload concerns to the Southwest Strategy Regional Implementation Team.

This process is designed to provide agency input in setting consultation workload priorities and to ensure that agency needs are addressed.

ATTACHMENT B

U.S. FISH AND WILDLIFE SERVICE RECOMMENDATIONS FOR CONTENTS OF BIOLOGICAL EVALUATIONS AND BIOLOGICAL ASSESSMENTS

When you prepare a Biological Evaluation (BE) or Biological Assessment (BA), keep in mind that the people who read or review this document may not be familiar with the project area or what you are proposing. Your BE or BA should present a clear line of reasoning that explains the proposed project and how you determined the effects of the project on each threatened or endangered species in the project area. Try to avoid technical jargon that is not readily understandable to people outside your agency or area of expertise. Remember, this is a public document. Some things to consider and include (if appropriate) in your BE or BA follow.

1. What is the difference between a Biological Assessment and a Biological Evaluation?

By regulation, a Biological Assessment is prepared for "major construction activities" considered to be Federal actions significantly affecting the quality of the human environment as referred to in the National Environmental Policy Act of 1969 (NEPA) [(42 U.S.C. 4332(2)(C))]. A BA is required if listed species or critical habitat may be present in the action area. A BA also may be recommended for other activities to ensure the agency's early involvement and increase the chances for resolution during informal consultation. Recommended contents for a BA are described in 50 CFR §402.12(f).

Biological Evaluation is a generic term for all other types of analyses. Although agencies are not required to prepare a Biological Assessment for non-construction activities, if a listed species or critical habitat is likely to be affected, the agency must provide the Service with an evaluation on the likely effects of the action. Often this information is referred to as a BE. The Service uses this documentation along with any other available information to decide if concurrence with the agency's determination is warranted. Recommended contents are the same as for a BA, as referenced above.

The BAs and BEs should not be confused with Environmental Assessments (EA) or Environmental Impact Statements (EIS) which may be required for NEPA projects. These EISs and EAs are designed to provide an analysis of multiple possible alternative actions on a variety of environmental, cultural, and social resources, and often use different definitions or standards.

2. What are you proposing to do?

- Describe the project. A project description will vary, depending on the complexity of the project. For example, describing the placement and construction of a new microwave tower may be relatively simple, but describing an alternative for improving range management likely would be more detailed and complex. Include sketches if they will help others understand your proposed action and its relationship with the species' habitat.
- How are you (or the project proponent) planning on carrying out the project? What tools or methods may be used? How will the site be accessed?

- Describe the project area. Always include a map (topographic maps are particularly helpful). Provide photographs including aerials, if available. Describe the project area (i.e., topography, vegetation, condition/trend).
- Describe current management or activities relevant to the project area. How will your project change the area?
- Supporting documents are very helpful. If you have a mining plan, research proposal, NEPA or other planning document or any other documents regarding the project, attach them to the BE or BA.

3. What threatened or endangered species may occur in the project area?

A request for a species list may be submitted to the Service, or the Federal action agency or its designated representative may develop the list. If you have information to develop your own lists, the Service should be contacted periodically to ensure that changes in species' status or additions/deletions to the list are included. Sources of information include, but are not limited to, the Forest Service or Bureau of Land Management, New Mexico Department of Game and Fish, members of the public or academic community, and books and various informational booklets. Due to budget constraints and loss of personnel, the New Mexico Ecological Services Field Office only provides general, county-wide species lists.

Use your familiarity with the project area when you develop your species lists. Sometimes a species may occur in the larger regional area near your project, but the habitat necessary to support the species is not in the project area (including areas that may be beyond the immediate project boundaries, but within the area of influence of the project). If, for example, you know that the specific habitat type used by a species does not occur in the project area, it does not need to appear on the species list for the project. However, documentation of your reasoning is helpful for Service biologists or anyone else that may review the document.

4. Have you surveyed for species that are known to occur or have potential habitat in the proposed project area?

The "Not Known To Occur Here" Approach is a common flaw in many BA/BEs. The operative word here is "known." Unless adequate surveys have been conducted or adequate information sources have been referenced, this statement is difficult to interpret. It begs the questions "Have you looked?" and "How have you looked?" Always reference your information sources.

Include a clear description of your survey methods so that the reader can have confidence in your results. Answer questions such as:

- How intensive was the survey? Did you look for suitable habitat or did you look for individuals? Did the survey cover the entire project area or only part of it? Include maps of areas surveyed if appropriate.

- Who did the surveys and when? Was the survey done during the time of year/day when the plant is growing or when the animal can be found (its active period)? Did the survey follow accepted protocols?
- If you are not sure how to do a good survey for the species, the Service recommends contacting species experts. Specialized training is required before you can obtain a permit to survey for some species, such as the Mexican spotted owl and southwestern willow flycatcher.
- *Remember that your evaluation of potential impacts from a project does not end if the species is/are not found in the project area. You still must evaluate what effects would be expected to the habitat, even if it is not known to be occupied.*

5. Provide background information on the threatened or endangered species in the project area.

Describe the species in terms of overall range and population status. How many populations are known? How many occur in the project area? What part of the population will be affected by this project? Will the population's viability be affected? What is the current habitat condition and population size and status? Describe the related items of past management for the species, such as stocking programs, habitat improvements, or loss of habitat or individuals caused by previous projects.

6. How will the project affect the threatened or endangered species or critical habitat that occurs in the project area?

- If you believe the project will not affect the species, explain why.
- If you think the project may affect the species, explain what the effects might be. The Endangered Species Act requires you to consider all effects when determining if an action funded, permitted, or carried out by a Federal agency may affect listed species. Effects you must consider include direct, indirect, and cumulative effects. Effects include those caused by interrelated and interdependent actions, not just the proposed action. Direct effects are those caused by the action and occur at the same time and place as the action. Indirect effects are caused by the action and are later in time but are reasonably certain to occur. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no significant independent utility apart from the action under consideration. Cumulative effects are those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation.
- Describe measures taken to avoid, reduce, or eliminate adverse effects or enhance beneficial effects to the species. Refer to conversations you had with species experts to achieve these results.

- Consider recovery potential if the project area contains historic range for a species.
- Evaluate designated critical habitat areas by reviewing the physical or biological features essential to the conservation of the species. *Even if no critical habitat has been designated for a species, the evaluation of the project effects must include effects to the habitat, not just the species.*

7. What is your decision? The Federal action agency must make a determination of effect.

Quite frequently, effect determinations are not necessarily *wrong*; they simply are not justified in the assessment. The assessment should lead the reviewer through a discussion of effects to a logical, well-supported conclusion. Do not assume that the Service biologist is familiar with the project and/or its location, and there is no need to fully explain the impact the project may have on listed species. If there is little or no connection or rationale provided to lead the reader from the project description to the effect determination, we cannot assume conditions that are not presented in the assessment. Decisions must be justified biologically. The responsibility for making the determination of effect falls on the Federal action agency; however, the Service may ask the agency to revisit its decision or provide more data if the conclusion is not adequately supported by biological information.

You have three choices for each listed species or area of critical habitat:

1. "No effect" means there are absolutely no effects of the project, positive or negative. "No effect" does not include a *small* effect or an effect that is *unlikely* to occur. If effects are insignificant (in size) or discountable (extremely unlikely), a "may affect, but not likely to adversely affect" determination is appropriate.
2. "May affect - is not likely to adversely affect" means that all effects are beneficial, insignificant, or discountable. Beneficial effects have contemporaneous positive effects without any adverse effects to the species or habitat (i.e., there can not be "balancing," wherein the benefits of the project would be expected to outweigh the adverse effects - see #3 below). Insignificant effects relate to the size of the impact (and should not reach the scale where take occurs). Discountable effects are those extremely unlikely to occur. These determinations require written concurrence from the Service. Based on best judgement, a person would not: (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur.
3. "May affect - is likely to adversely affect" means that all adverse effects can not be avoided. A combination of beneficial and adverse effects is still "likely to adversely affect," even if the net effect is neutral or positive. Adverse effects do not qualify as discountable simply because we are not certain they will occur. The probability of occurrence must be extremely small to achieve discountability. Likewise, adverse effects do not meet the definition of insignificant because they are less than major. If the adverse effect can be detected in any way or if it can be meaningfully articulated in a discussion of the results, then it is not insignificant, it is likely to adversely affect. This requires formal consultation with the Service.

A fourth finding is possible for proposed species or proposed critical habitat:

4. "Is likely to jeopardize/adversely modify proposed species/critical habitat" is the appropriate conclusion when the action agency identifies situations in which the proposed action is likely to jeopardize the proposed species, or destroy or adversely modify the proposed critical habitat. If this conclusion is reached, conference is required.

List the species experts you contacted when preparing the BE or BA but avoid statements that place the responsibility for the decision of "may affect" or "no effect" on the shoulders of the species experts. Remember, this decision is made by the Federal action agency.

Provide supporting documentation, especially any agency reports or data that may not be available to the Service. Include a list of literature cited.

Prepared by:
U.S. Fish and Wildlife Service
Arizona Ecological Services Field Office
January 1997

Revised by:
U.S. Fish and Wildlife Service
New Mexico Ecological Services Field Office
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(505) 346-2525
April 1997

**OUTLINE EXAMPLE FOR A
BIOLOGICAL ASSESSMENT OR BIOLOGICAL EVALUATION**

- A. Cover letter - VERY IMPORTANT - Include purpose of consultation, project title, and consultation number (if available). A determination needs to be made for each species. You have three options: 1) a "no effect" determination; 2) requesting concurrence with an "is not likely to adversely affect" determination; 3) a "may affect, is likely to adversely affect" determination, and a request for formal consultation. If proposed species or critical habitat are included, state whether the project is likely to result in jeopardy to proposed species, or the destruction or adverse modification of proposed critical habitat.

- B. Project description - Describe the proposed action and the project area. Be specific and quantify whenever possible.

- C. For Each Species
 - 1. Description of affected environment (quantify whenever possible)
 - 2. Description of species biology
 - 3. Describe current conditions for each species
 - a. Rangeland
 - b. In project area
 - c. Cumulative effects of State and private actions in project area
 - d. Other consultations of Federal action agency in area to date
 - 4. Describe critical habitat (if applicable)
 - 5. Describe effects of proposed action on each species and/or critical habitat.
 - a. Direct
 - b. Indirect
 - c. Interrelated and interdependent actions
 - d. Incidental take

- D. Conservation measures (protective measures to minimize effects for each species)

- E. Conclusions (effects determination for each species)

- F. Literature Cited

- G. List of Contacts Made/Preparers

- H. Maps/ Photographs

ATTACHMENT C

Understanding between Lower Colorado Region of the Bureau of Reclamation and the Phoenix Office of Ecological Services on a Proposed Project

Project Description

Mohave County, Arizona, has requested from the National Park Service that the County be allowed to replace an existing waterline and intake structure. (See Figure ---.) The length of the pipeline would be constructed from the head of Telephone Cove in Lake Mohave to about the middle of the cove, a distance of about ----- linear feet. The pipeline would be laid [above or below] the cove's bottom. The total area of the intake crib would be about --- square feet. A pump would withdraw an estimated 44,000 gallons of water per day or about 50 acre feet per year from the lake.

Species of Concern

There are two species that might be affect from the proposed project, and these are the following:

- 1) Bonytail (Gila elegans)
- 2) Razorback sucker (Xyrauchen texanus)

And their critical habitat.

Potential Impacts

The proposal has the potential to modify the critical habitat of these species through the construction of the pipeline. This activity could also disturb these species during their spawning. After the project is constructed, the operation of the system has the potential to entrain eggs, larvae, and adults of these species.

Impact Analysis

The Biological Assessment will evaluate the total area of critical habitat that would be modified from the proposal, as well as the potential value of the area to the two species of concern. The document will further analyze the potential for the entrainment of eggs, larvae, and adults of the two species.

Signature Block

Date

Signature Block

Date

MEMORANDUM OF UNDERSTANDING
between the
UNITED STATES DEPARTMENT OF AGRICULTURE
Forest Service
the
UNITED STATES DEPARTMENT OF DEFENSE
the
UNITED STATES DEPARTMENT OF THE ARMY
Corps of Engineers
the
UNITED STATES DEPARTMENT OF COMMERCE
National Marine Fisheries Service
the
UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Bureau of Mines
Bureau of Reclamation
Fish and Wildlife Service
Minerals Management Service
National Park Service
the
UNITED STATES DEPARTMENT OF TRANSPORTATION
Coast Guard
Federal Aviation Administration
Federal Highway Administration
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
on
IMPLEMENTATION OF THE ENDANGERED SPECIES ACT

This Memorandum of Understanding (MOU), is made and entered into by and among the U.S. Department of Agriculture Forest Service (hereinafter referred to as FS); U.S. Department of the Army Corps of Engineers (hereinafter referred to as COE); U.S. Department of Commerce National Marine Fisheries Service (hereinafter referred to as NMFS); U.S. Department of Defense (hereinafter referred to as DoD); U.S. Department of the Interior Bureau of Land Management (hereinafter referred to as BLM); U.S. Department of the Interior Bureau of Mines (hereinafter referred to as USBM); U.S. Department of the Interior Bureau of Reclamation (hereinafter referred to as BOR); U.S. Department of the Interior Fish and Wildlife Service (hereinafter referred to as FWS); U.S. Department of the Interior Minerals Management Service (MMS); U.S. Department of the Interior National Park Service (hereinafter referred to as NPS); U.S. Department of Transportation Coast Guard (hereinafter referred to as Coast Guard); U.S. Department of Transportation Federal Aviation Administration (hereinafter referred to as FAA); U.S. Department of Transportation Federal Highway Administration (hereinafter referred to as FHWA); and U.S. Environmental Protection Agency (hereinafter referred to as EPA). Collectively, the parties to this MOU will be referred to as Cooperators.

1. PURPOSE

The Endangered Species Act of 1973, as amended, (ESA) provides a means to conserve threatened and endangered species and the ecosystems upon which they depend. The ESA directs all Federal agencies to use their authorities to further the purposes of the ESA by carrying out programs to conserve threatened and endangered species.

The purpose of this MOU is to establish a general framework for cooperation and participation among the Cooperators in the exercise of their responsibilities under the ESA. The Cooperators will work together—and with appropriate involvement of the public, States, Indian Tribal governments, and local governments—to achieve the common goal of conserving species listed as threatened or endangered under the ESA by protecting and managing their populations and the ecosystems upon which those populations depend.

The Cooperators will work together to achieve the common goals of (1) conserving species Federally listed as threatened or endangered under the ESA; (2) using existing Federal authorities and programs to further the purposes of the ESA; and (3) improving the efficiency and effectiveness of the interagency consultations conducted pursuant to section 7(a)(2) of the ESA. Conservation Agreements (See Attachment A for definition of terms) will be developed for species and or habitats selected by the cooperators using an agreed upon method of priority setting and in full consideration of budgetary feasibility and respective agency missions. Attachment A is incorporated by reference into this MOU.

II. STATEMENT OF MUTUAL INTEREST AND MUTUAL BENEFITS

The BLM is a land management agency responsible for the management of public lands. The BLM manages 270 million surface acres in 29 states that serve as habitat for many plant and animal species. The BLM also has a national policy (BLM Manual 6840) and strategic plans for implementing BLM's Fish and Wildlife 2000, an initiative to manage habitats for plant and animal species to prevent the need for their federal listing under the ESA.

The USBM is a research, development, information, and analysis agency with a mission to insure mineral supplies to the country at acceptable economic, social, environmental costs. The USBM's goals include an improved understanding of the interaction between economic activities such as mining and ecosystems; the identification of management and policy options that can increase the potential for the coexistence of economic activities and healthy ecosystems; and the identification of opportunities for ecosystem-related research and development.

The BOR is a water resource management agency responsible for the management, protection, and development of water and land resources that include some 300 reservoir areas and thousands of miles of river and stream corridors in an environmentally and economically sound manner in the interest of the American public.

The Coast Guard has marine environmental protection and other responsibilities that include maritime law enforcement, maritime safety, environmental protection, and national security. The Coast Guard's environmental duties range from pollution response and fisheries enforcement to internal environmental compliance.

The COE is the water resources development agency that carries out the Secretary of the Army's authorities for navigation, flood damage reduction, and related purposes. The COE has planned, developed, and maintains the inland and intracoastal waterways, flood control levees and reservoirs, and operates its hydropower facilities. The COE also has stewardship responsibilities for over 11 million acres of upland, wetlands, and water. The COE administers the regulatory programs for Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act.

The DoD manages 25 million acres of public lands while conducting its primary mission of national defense. These lands are home to many threatened and endangered species and significant habitat areas. DoD recognizes that environmental security is a major component of national security. The DoD is committed to developing a comprehensive biological resources management program on its land on its lands and waters.

The EPA protects and preserves public health and the sustainability of natural ecosystems by preventing, controlling, and abating pollution. EPA achieves these goals by reducing environmental risks to human health, protecting natural systems from degradation, and restoring ecological integrity through its regulatory and non-regulatory programs.

The FAA has the primary responsibility for assuring that the Nation's air transportation system is safe, efficient, and responsive to the present and future needs of the domestic and foreign commerce of the United States and the national defense. The FAA directly regulates airmen, aircraft, and airspace and also administers the Airport and Airway Improvement Program and other safety, research, and training programs. In carry out its responsibilities, the FAA is responsible for ensuring that its policies, programs, and activities comply with the ESA and all other applicable federal laws.

The FHWA has the primary responsibility for assuring that the Nation's highway transportation system is safe, economical, and efficient with respect to the movement of people and goods while giving full consideration to the highway's impact on environmental and social and economic conditions. FHWA, in cooperation with the States, administers the Federal-Aid Highway Construction Program and other safety, research, and training programs related to highway use, planning, and construction. The FHWA is responsible for ensuring that federally financed highways are planned and constructed in compliance with the ESA, as well as all other applicable federal laws and regulations.

The FS is a land management agency responsible for the management of the national forests and grasslands. The FS manages 191 million acres in 43 states that serve as habitat for many plant and animal species. The FS has a national policy (Forest Service Manual 2670) to manage habitats for plant and animal species to prevent the need for their Federal listing under the ESA. The FS, in conjunction with State Foresters, also cooperates with State and private managers, and has research responsibilities that include ESA implementation.

The FWS is a Federal land management agency and regulatory agency responsible for the implementation of the ESA and coordination with other Federal and State agencies in the national effort to conserve species listed as threatened or endangered under the ESA. The FWS is responsible for publishing and revising the list of threatened, endangered, and candidate plant and animal species. In addition to administering the ESA, the FWS manages the National Wildlife Refuge system, which is the only network of Federal lands and waters set aside primarily for the protection and conservation of fish and wildlife, including threatened and endangered species.

The MMS primary responsibilities are to manage the mineral resources located on the Nation's outer continental shelf (OCS), collect revenue from the Federal OCS and onshore Federal and Indian lands, and distribute those revenues. MMS works to ensure that offshore mineral resource operations are conducted in an environmentally sound and safe manner, including meeting the requirements of the ESA.

The NMFS is a regulatory agency responsible for stewardship of the Nation's living marine resources. NMFS shares responsibility with the FWS for the implementation of the ESA and coordination with other Federal and State agencies in the national effort to conserve species listed as threatened or endangered under the ESA. As part of this stewardship role, the NMFS implements the ESA for most anadromous and marine species.

The NPS preserves and manages more than 80 million acres in 367 units of the National Park System for the enjoyment of present and future generations and is responsible for increasing the public knowledge, awareness, and appreciation of natural resources. NPS policies promote the conservation of all Federally listed threatened, endangered, or candidate species within park boundaries and their critical habitats.

Section 2(c) of the ESA declared the policy of Congress that all Federal departments and agencies shall seek to conserve threatened and endangered species and shall utilize their authorities to further the purposes of the ESA. This section also declared the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species.

Section 5 of the ESA directs the Secretary of Agriculture, with respect to the National Forest System, and the Secretary of the Interior to establish and implement a program to acquire lands and to conserve fish, wildlife, and plants, including threatened and endangered species.

Section 6(a) of the ESA directs the Secretary to cooperate to the maximum extent possible with the States in carrying out programs authorized by the ESA. Such cooperation shall include consultation with the States concerned before acquiring any land or water, or interest therein, for the purpose of conserving any endangered or threatened species.

Section 7(a)(1) of the ESA directs the Secretary of Commerce and the Secretary of the Interior "to review other programs administered by him and utilize such programs in furtherance of the purposes of this Act." Section 7(a)(1) also directs all other Federal agencies to use their authorities to further the purposes of the ESA by carrying out programs for the conservation of threatened and endangered species.

Section 7(a)(2) of the ESA directs Federal agencies, in consultation with the Secretary of Commerce or the Secretary of the Interior, to insure that any agency action is not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of designated critical habitat.

The Cooperators seek to improve efficiency by combining their efforts, to foster better working relationships and promote the conservation of species listed as threatened or endangered under the ESA. In a closely-related, but separate, Memorandum of Understanding that was signed on January 25, 1994, certain Cooperators have agreed to use their authorities to help prevent species endangerment by conserving species that are tending toward Federal listing as threatened or endangered under the ESA (i.e., sensitive and candidate species).

In consideration of the above premises,

III. THE COOPERATORS AGREE TO THE FOLLOWING:

A. Each individual agency that is a party to this MOU will:

1. Use its authorities to further the purposes of the ESA by carrying out programs for the conservation of Federally listed species, including implementing appropriate recovery actions that are identified in recovery plans;
2. Identify opportunities to conserve Federally listed species and the ecosystems upon which those species depend within its existing programs or authorities.
3. Determine whether its respective planning processes effectively help conserve threatened and endangered species and the ecosystems upon which those species depend.
4. Use existing programs, or establish a program if one does not currently exist, to evaluate, recognize, and reward the performance and achievements of personnel who are responsible for planning or implementing programs to conserve or recover listed species or the ecosystems upon which they depend.

B. By the end of the first quarter of Fiscal Year 1995, the Cooperators will establish, or use existing, regional interagency working groups that will identify geographic areas within which the groups will coordinate agency actions and create opportunities, and overcome barriers, to conserve species listed or proposed as threatened or endangered under the ESA and the ecosystems upon which they depend and, to the extent practicable, protect candidate, or sensitive species and the ecosystems upon which they depend. The agencies involved in the regional working groups will, as appropriate:

1. Identify critical threats to the native species and ecosystems in the geographic area they are focusing upon;
2. Identify new and existing approaches within the jurisdiction of the Cooperators that are most likely to alleviate the threats that have been identified;
3. Assist the FWS or NMFS to assemble interagency, interdisciplinary teams to develop recovery plans or Conservation Agreements for species listed as threatened or endangered under the ESA and, to the extent practicable, sensitive species or the ecosystems upon which they depend;
4. Cooperate to implement recovery plans, Conservation Agreements, and other affirmative conservation actions that are developed by the regional interagency groups;
5. Identify and, to the extent practicable, attempt to resolve regional issues associated with interagency consultations undertaken pursuant to section 7(a)(2)

of the ESA. These issues include, but are not limited to, encouraging multi-agency, multi-project consultations; exploring opportunities to increase the effectiveness of programmatic consultations; improving consistency and clarity in the interagency consultation process; addressing uncertainty; providing opportunities for enhanced dialogue between agencies during formal and informal consultation; increasing the level of interagency guidance and training; and exploring approaches to resolving disagreements among agencies resulting from the interagency consultation process;

6. Implement programs to monitor the status of species that have been removed from the Federal list of threatened and endangered species;
7. Develop recommendations and undertake actions to implement the ESA with the appropriate involvement of the public, States, Indian Tribal governments, and local governments;
8. Exchange information and coordinate research activities to promote efficient and effective conservation of threatened and endangered species, to minimize social costs and economic impacts of recovery plan implementation, consistent with timely recovery, and to develop and test new alternatives for conserving species listed as threatened or endangered under the ESA and the ecosystems upon which they depend.
9. Prepare and disseminate information to the public; and
10. Document and share information about the outcome or status of any recovery tasks or affirmative conservation activities.

C. The Cooperators will establish a national interagency ESA working group [the "national working group"] to coordinate the implementation of the ESA. The national working group will identify and coordinate improvements in Federal implementation of the ESA. The national working group will, as appropriate:

1. Identify the geographic regions of the United States, its possessions, and territories that will be used as the basis for organizing the regional interagency work groups;
2. Identify ways to improve the conservation of species listed as threatened or endangered under the ESA, including protection of the ecosystems upon which they depend, in agency planning processes and other agency programs;
3. At least annually, review the previous year's work, prepare and disseminate a report of accomplishments to the public, and establish a program of work for subsequent fiscal years;
4. Identify, and to the extent practicable, attempt to resolve national issues associated with interagency consultations undertaken pursuant to section 7(a)(2) of the ESA. These issues include, but are not limited to, encouraging multi-

agency, multi-project consultations; exploring opportunities to increase the effectiveness of programmatic consultations; improving consistency and clarity in the interagency consultation process; addressing uncertainty; providing opportunities for enhanced dialogue between agencies during formal and informal consultation; increasing the level of interagency guidance and training; and exploring approaches to resolving disagreements among agencies resulting from the interagency consultation process; and

5. Take other appropriate actions to help individual agencies or regional working groups to more effectively conserve species listed or proposed for listing under the ESA, the ecosystems upon which they depend, and, to the extent practicable, protect candidate and sensitive species.

IV. IT IS MUTUALLY AGREED AND UNDERSTOOD BY AND AMONG THE COOPERATORS THAT:

- A. Specific work projects or activities that involve the transfer of funds, services, or property among the Cooperators will require the execution of separate agreements or contracts, contingent upon the availability of funds as appropriated by Congress. Each subsequent agreement or arrangement involving the transfer of funds, services, or property among the Cooperators must comply with all applicable statutes and regulations, including those statutes and regulations applicable to procurement activities, and must be independently authorized by appropriate statutory authority.
- B. This MOU in no way restricts the Cooperators from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.
- C. Nothing in this MOU shall obligate the Cooperators to expend appropriations or enter into any contract or other obligations.
- D. This MOU may be modified or amended upon written request of any party hereto and the subsequent written concurrence of all of the Cooperators. Cooperator participation in this MOU may be terminated with the 60-day written notice of any party to the other Cooperators. Unless terminated under the terms of this paragraph, this MOU will remain in full force and in effect until September 30, 1999.
- E. This Memorandum of Understanding is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.
- F. The terms of this Memorandum of Understanding are not intended to be enforceable by any party other than the signatories hereto.

V. PRINCIPAL CONTACTS

The following persons will be the principal contacts for their respective agencies at the time of execution of this MOU. These contacts may be changed at an agencies' discretion upon notice to the other Cooperators.

Threatened and Endangered Species Coordinator
Bureau of Land Management
1849 C Street, N.W. (LSB)
Washington, D.C. 20240
(202) 452-7761

Environmental Coordinator
Office of the Director
U.S. Bureau of Mines
810 7th Street, N.W.
Washington, D.C. 20241
(202) 501-9304

Director, Office of Policy and External Affairs
Bureau of Reclamation
1849 C Streets, N.W. MS-7650
Washington, D.C. 20240
(202) 208-4291

Deputy Chief (G-O)
Office of Law Enforcement and Defense Operations
U.S. Coast Guard
2100 2nd Street, S.W.
Washington, D.C. 20593
(202) 267-1436

Endangered Species Coordinator (Civil Works)
U.S. Army Corps of Engineers, CECW-PD
20 Massachusetts Avenue, N.W.
Washington, D.C. 20314-1000
(202) 272-0132

Director, Conservation
Office of the Under Secretary of Defense
(Environmental Security)
400 Army-Navy Drive, Suite 206
Arlington, Virginia 22202
(703) 604-5707

Director, Office of Federal Activities
U.S. Environmental Protection Agency
401 M Street, S.W. (2251)
Washington, D.C. 20460
(202) 260-5053

Environmental Protection Specialist
ATTN: Dr. Ann M. Hooker
Policy and Regulatory Division (AEE-300)
Office of Environment and Energy
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, D.C. 20591
(202) 493-4018

Chief, Environmental Quality Branch (HEP-42)
Office of Environmental and Planning
Federal Highway Administration
400 7th Street, S.W.
Washington, D.C. 20590
(202) 366-9173

Chief, Endangered Species Division
U.S. Fish and Wildlife Service
1849 C Street, N.W. MS-ARLSQ 452
Washington, D.C. 20240
(703) 358-2171

Program Manager
Threatened, Endangered and Sensitive Species
Program
U.S.D.A. Forest Service
P.O. Box 96090
Washington, D.C. 20090
(202) 205-1220

Chief, Endangered Species Division
National Marine Fisheries Service
Office of Protected Resources
1335 East-West Highway
Silver Spring, Maryland 20910
(301) 713-2322

Chief, Environmental Policy and Programs Division
U.S. Minerals Management Service
381 Elden Street
Herndon, Virginia 22070-4817
(703) 787-1656

Threatened and Endangered Species Coordinator
National Park Service
P.O. Box 37127 MS-490
Washington, D.C. 20013
(202) 343-8115

In witness whereof, the parties hereto have executed this MOU as of the last written date below.

Daniel Beard SEP 27 1994
DANIEL P. BEARD, Commissioner
USDI Bureau of Reclamation

Mollie H. Beattie SEP 28 1994
MOLLIE H. BEATTIE, Director
USDI Fish and Wildlife Service

Dem. P. Munro
for MICHAEL DOMBECK, Acting Director
USDI Bureau of Land Management

H. Enzer 9/29/94
HERMANN ENZER, Acting Director
USDI Bureau of Mines

Cynthia Quarterman 9/28/94
CYNTHIA QUARTERMAN, Acting Director
USDI Minerals Management Service

Sherry Goodman 9/27/94
SHERRI GOODMAN, Deputy Under Secretary
Environmental Security
US Department of Defense

David R. Hinson SEP 28 1994
DAVID R. HINSON, Administrator
USDOT Federal Aviation Administration

Roger G. Kennedy SEP 28 1994
ROGER G. KENNEDY, Director
USDI National Park Service

Robert E. Kramek SEP 27 1994
ADMIRAL ROBERT E. KRAMEK, Commandant
US Coast Guard

Roland Schmitt 9/27/94
ROLLAND SCHMITTEN, Assistant Administrator
USDC National Marine Fisheries Service

Rodney E. Slater
RODNEY E. SLATER, Administrator
USDOT Federal Highway Administration

Robert M. Sussman SEP 28 1994
ROBERT M. SUSSMAN, Deputy Administrator
US Environmental Protection Agency

Jack Ward Thomas
JACK WARD THOMAS, Chief
USDA Forest Service

John H. Zirsky 9/28/94
JOHN H. ZIRSKY, Acting Assistant Secretary
US Army Corps of Engineers

ATTACHMENT A DEFINITION OF TERMS

CANDIDATE SPECIES: those plant and animals species that, in the opinion of the Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS), may qualify for listing as threatened or endangered pursuant to the ESA. The FWS recognizes two categories of candidate species. Category 1 candidates are taxa for which the FWS has sufficient information to support proposals for listing as either threatened or endangered. Category 2 candidates are taxa for which the information available to the FWS indicates that a proposed listing may be appropriate, but for which the available information is insufficient to support a listing. The NMFS' most recent list of candidate species is published in 56 FR 26797. Because of the smaller number of species on the NMFS list, NMFS does not organize them by categories.

CONSERVATION AGREEMENT: a formal, written document agreed to by the FWS and/or NMFS and another Federal agency, Tribe, State agency, local government, or private agency, organization, or individual to achieve the conservation or recovery of threatened or endangered species through voluntary cooperation. A Conservation Agreement documents the specific actions and responsibilities for which each party agrees to be held accountable. The objective of a Conservation Agreement is to achieve the recovery of a threatened, endangered, or candidate species.

CONSERVE, CONSERVING, and CONSERVATION: as used in this MOU, these terms, except when referring to Conservation Agreements, have the same meaning as they do in the ESA. These terms mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the ESA are no longer necessary. Such methods include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary cases where population pressure within a given ecosystem cannot be otherwise relieved, may include regulated taking.

ENDANGERED SPECIES: as used in this MOU, this term has the same meaning as it does in the ESA. That is, any species which is in danger of extinction throughout all or a significant portion of its range and has been listed as endangered pursuant to section 4(a)(1) of the ESA, other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of the ESA would present an overwhelming and overriding risk to man.

FISH AND WILDLIFE: as used in this MOU, this term has the same meaning as it does in the ESA. That is, any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body parts thereof.

PLANT: as used in this MOU, this term has the same meaning as it does in the ESA. That is, any member of the plant kingdom, including seeds, roots, and other parts thereof.

RECOVERY PLAN: as used in this MOU, this term has the same meaning as it does in the ESA. That is, plans that are developed for the conservation and survival of threatened and endangered species. These plans provide descriptions of site-specific management actions that may be necessary to achieve the plan's goal for the conservation and survival of threatened and endangered species. These plans also provide objective, measurable criteria which, when met, would result in a determination that the species be removed from the Federal list of threatened and endangered species. Finally, recovery plans include

estimates of the time required to conserve listed species and the cost of carrying out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.

SENSITIVE SPECIES: those plants and animal species that have been identified through appropriate agency procedures for which population viability is a concern as evidenced by: (a) significant current or predicted downward trend in population numbers or density, (b) significant current or predicted downward trend in habitat capability that would reduce a species' existing distribution.

THREATENED SPECIES: as used in this MOU, this term has the same meaning as it does in the ESA. That is any species listed as threatened pursuant to section 4(a)(1) of the ESA, which is in danger of becoming endangered within the foreseeable future throughout all or a significant portion of its range.