



Section 7

Interagency Cooperation

“All ... Federal departments and agencies **shall... utilize their authorities** in furtherance of the purposes of this Act **by carrying out programs for the conservation of endangered species . . .** *and by taking such action necessary to insure that (their) **actions** ... do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat ...”*



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SECTION 7(a)(1)

...Federal agencies shall... **utilize their authorities** in furtherance of the purposes of this Act **by carrying out programs for the conservation** of endangered species and threatened species...

Mandate and authority for all agencies to prioritize and conserve listed species



Section 7(a)(1) Conservation

A programmatic strategy developed and implemented by a Federal agency (in coordination with FWS/NMFS), outlining how the action agencies authorities can and will be used to contribute to the conservation (recovery) of listed species.

- Project planning, design, techniques, and processes
 - Avoidance
 - Minimization
 - **Benefits**
- **Offsite habitat rehabilitation**
- **Intelligence** (information critical to management, i.e., “research”)

Developing and implementing 7(a)(1) is not optional; however, the when, where, how, and how much *is Discretionary*



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SECTION 7(a)(2)

Focus is on “actions” and the bottom line (avoiding jeopardy)

Primary Purpose:

Each Federal agency shall... **insure that any *action* ... is not likely to jeopardize** the continued existence of any endangered species or threatened species...or result in destruction...of (critical) habitat...

Secondary Purpose:

- ***authorize (permit) “take” incidental to Federal agency actions***
[section 7(b)(4)]
 - Permit (Biop) conditions ***are non-discretionary.***



Section 7(a)(2) was never intended to be a conservation tool...Consultations under section 7(a)(2) are concerned strictly with **facilitating** Federal **actions** that have **negative effects** to listed species within defined action areas.

Without positive conservation actions successive 7(a)(2) consultations may,

- erode a species baseline,
- *progressively limit action agency management options,*
and,
- contribute to a future jeopardy call.



7(a)(1) Benefits to the Action Agencies

- ***Controlled by the Action agency... flexibility in implementation;***
- Path to address ecological, status and trend data (intelligence) gaps;
- Increased action agency awareness of the species baseline both within and beyond action areas (expands opportunities beyond action areas);
- ***More action agency control of the 7(a)(2) consultation process;***
- ***Transform perception of Federal program from a “threat” into a conservation tool;***
- Path to justify appropriation requests for conservation actions through normal budgetary processes;
- Administrative record demonstrating compliance with the Act, as well as other Federal laws, regulations, and policies relative to ecosystem management.

**Section 7(a)(1) does not preclude 7(a)(2)
It is not a “get-out-of-jail” card...**



LOWER MISSISSIPPI RIVER Strategic Habitat Conservation

**Cooperative Efforts between the
U.S. ARMY CORPS OF ENGINEERS, MVD,
and the
U.S. FISH AND WILDLIFE SERVICE, Region 4**



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2000 MMR Jeopardy Biological Opinion

Fish and Wildlife Service (FWS) Region 3 issued Jeopardy BO for COE O&M activities in 200 mi MMR

- Region 3 BO leaves MVD, Districts, and FWS Region 4 with ESA compliance issues in the LMR
 - How does O&M in 200 mi (~6% of the range) jeopardize PS?
 - How does the RPA remove jeopardy? ...this is a conservation plan...

Region 3 Reasonable & Prudent Alternative (RPA) for the MMR

- 1) Conduct PS habitat study
- 2) Develop a PS conservation & restoration plan
- 3) Develop and implement a long-term aquatic habitat restoration program
- 4) Begin short-term implementation of aquatic habitat restoration measures



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COE/FWS Region 4 Options Considered for LMR Pallid Sturgeon Issues in 2001

Option 1: FWS recommended programmatic consultation for Channel Improvement and O&M in LMR

MVD rejected this option

Option 2: COE and Region 4 collaborate under 7(a)(1) of the ESA, to develop administrative record that shows compliance with the Act

Develop and apply scientific information and build trust through this process, culminating in formal consultation at some point



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2001 USACE/USFWS Section 7(A)(1) Conservation Strategy for LMR Pallid Sturgeon

- **Research:** Conduct studies on LMR PS populations and habitats (MMR RPA 1).
- **Engineering:**
 - Identify opportunities to modify O&M and Channel Improvement Programs actions to maintain and even enhance LMR habitats (MMR RPA 4);
 - Identify opportunities and mechanisms to restore aquatic habitats (MMR RPA 3).
- **Monitoring:** Monitor habitat and species responses (MMR RPA 2, in part).

MVD Requests to extend the plan to cover endangered interior least tern and fat pocketbook mussel



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ADMINISTRATIVE RECORD

2001 - 2011

10-year record of research, monitoring, & habitat improvement (MMR RPA 1, 3, & 4)

- Increased knowledge of PS in the LMR by more than an order of magnitude (RPA 1)
- Developed, implemented, and documented a simple, informal interagency LMR habitat management and improvement program (RPA 3 & 4) with a proven track record
 - Constructed ~200 dike notches, restored flow in >20 mi secondary channel habitat, protected thousands of acres sandbar habitats

Includes benefits to endangered fat pocketbook mussel & interior least tern



Use of Administrative Record

- Shovelnose sturgeon listed under SOA
- Facilitate routine COE O&M and Channel improvement activities in the LMR (informal consultation)
- Completed 1 emergency consultation, and 2 formal consultations authorizing take of >1500 PS*
 - Bonnet Carre Spillway (92 PS)
 - White Ditch (1,150 PS)
 - Covenant/Blind River (350 PS)
- Conducted formal & informal consultations - interior least tern and fat pocketbook mussel



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LOWER MISSISSIPPI RIVER HABITAT CONSERVATION STRATEGY

1. USFWS LMR Strategic Habitat Conservation Plan
2. USACOE LMR Conservation Plan for Endangered Species (ESA section 7(a)(1))
3. USACOE Biological Assessment for LMR Channel Improvement and O&M Programs
4. Formal Programmatic Consultation



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2001 USACE MVD and USFWS MSFO Initiated Consultation under Section 7(a)(1)

Established a system of collaboration and cooperation which included State Conservation Agencies

2012 LMR Strategic Habitat Conservation Plan

Defined USFWS management expectations and conditions with USACE review and input

2013 USACE Section 7(a)(1) Conservation Plan, ILT, PLS, FPM

Defined USACE CIP, effects, and commitments with USFWS review and input

2013 USFWS CIP BIOP

Defined "Take," RPMs, T&Cs

LOWER MISSISSIPPI RIVER CONSERVATION

United States Department of the Interior
U.S. Fish and Wildlife Service
Lower Mississippi River Strategic Habitat Conservation Plan
August 29, 2012

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U.S. Army Corps of Engineers
Conservation Plan for the Interior Least Tern, Pallid Sturgeon, and Fatheadfish Listed in the Lower Mississippi River (Endangered Species Act, Section 7(a)(1))
July 22, 2013

BIOLOGICAL OPINION
TO
U.S. ARMY CORPS OF ENGINEERS
MISSISSIPPI VALLEY DIVISION
FOR
CHANNEL IMPROVEMENT PROGRAM
MISSISSIPPI RIVER AND TRIBUTARIES PROJECT
LOWER MISSISSIPPI RIVER

DATE:
12 DECEMBER, 2013

PREPARED BY:
MISSISSIPPI FIELD OFFICE
U.S. FISH AND WILDLIFE SERVICE
JACKSON, MISSISSIPPI



Expanding 7(a)(1) Opps

- State level (Mississippi ES)
 - Forest Service
 - USDA
 - Park Service
 - National Guard
 - Memphis District
- National level (ERDC)
 - SWD
 - GLORD
 - LAD
 - Others



BIOLOGICAL OPINION
U.S. ARMY CORPS OF ENGINEERS, Mississippi Valley
Division

CHANNEL IMPROVEMENT PROGRAM
MISSISSIPPI RIVER AND TRIBUTARIES PROJECT
LOWER MISSISSIPPI RIVER

U.S. FISH AND WILDLIFE SERVICE
Southeast Region



U.S. Fish & Wildlife Service

CONCLUSION

After reviewing the **current status** of the ILT, PS, and FPM, the **environmental baseline** for the action area, the **effects of continued operation and maintenance** of the CIP, the cumulative effects, and the Corps **section 7(a)(1) CIP conservation program**, it is the ***Service's biological opinion that the CIP is not likely to jeopardize*** the continued existence of the ILT, PS, and FPM.



INCIDENTAL TAKE STATEMENT

- ...it is not practical or possible to express...take in terms of individuals of ILT, PS, or FPM, or to monitor take-related impacts that might occur under the CIP...
- ...there is a direct and strong link between LMR secondary channels and the recruitment and survival of ILT, PS, and FPM.
- CIP modification of functional secondary channels could detrimentally affect their survival and recruitment, and would result in take of the species.
- ...secondary channel abundance and condition in the LMR (will be utilized) as a surrogate for take of all three species, and as a measure to reinitiate consultation.



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INCIDENTAL TAKE STATEMENT (cont.)

Authorizes no net loss (0) below 84 functional secondary channels (mean number of secondary channels (102) minus one standard deviation (18)).

A functioning secondary channel is defined as one bordering either vegetated or non-vegetated islands and maintaining hydrological connectivity with the main channel ...at ten feet above the Low Water Reference Plane (+10 LWRP).



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INCIDENTAL TAKE STATEMENT (cont.)

This Biological Opinion ... authorizes any take of ILT, PS, and FPM, incidental to CIP activities, including the modification of secondary channels in the LMR.



Reasonable and Prudent Measures

1. The Corps will **notify the Service** of the loss, the potential for loss, or gain of any secondary channels within the LMR.
2. During **annual partner meetings**, the Corps will summarize the potential for BMP deviations under projected construction and maintenance actions, and possible effects to the ILT, PS, and/or FPM.
3. The Corps may conduct no more **than 10 actions/year that deviate** from construction and maintenance BMPs without prior written approval by the Service.
4. The Corps will **annually consider any new ... information** relative to minimizing effects of CIP activities through modification of construction and maintenance BMPs.



Terms and Conditions

1. During **annual partner meetings**, Corp will summarize and consider the potential for new construction and maintenance project effects to secondary channels, and associated effects to the ILT, PS, and/or FPM.
2. The Corps will utilize actions (identified in the CIP Conservation Plan) to **monitor number and condition of LMR secondary channels**, and report findings during annual partner meetings.
3. During annual partner meetings, the Corps will summarize and consider any new ... information relative to minimizing effects of CIP activities through modification of construction and maintenance BMPs.
4. The Corps will provide relevant data and analysis prior to modification of any BMPs ... and will obtain the Services written concurrence prior to implementing modified BMPs



Conservation Recommendations

1. Conduct surveys/scientific investigations on population sizes, ecology, and habitat uses of ILT, PS, and FPM in the LMR.
2. Develop and implement monitoring protocols for ILT, PS, and FPM on the LMR.
3. Utilize sentinel receivers to monitor sonic tagged sturgeon around dredging and revetment construction activities.
4. Work with partners to develop a comprehensive Geographical Information System of LMR habitat features and endangered species associations.
5. Continue to work with partners to maintain/restore side channel and batture connectivity.



What Changed?

- No annual “clearance” required.
 - Need to document annual meeting (Clearance request can be modified as meeting summary and distributed to participants).
- Corps monitors “deviations” from BMPs, and is only required to formally request clearance when they may exceed 10/year (e.g., 2011 flood, 2012 drought).



What Didn't Change?

- Annual meetings
- Collaborative research and restoration efforts
- Need to maintain robust administrative record
 - Continue to document annual meetings, conservation actions, monitoring, etc.



- You can do conservation without formalizing under 7a1, but establishing a “formal” program insures institutional memory and minimizes future conflicts

Questions/Comments



<http://www.fws.gov/MississippiES/LMR.html>