



United States Department of the Interior



FISH AND WILDLIFE SERVICE

300 Westgate Center Drive
Hadley, MA 01035-9589

Memorandum

To: Project Leaders, Region 5
From: Assistant Regional Director – Ecological Services, Region 5
Subject: Regional Endangered Species Act Section 7(a)(1) Guidance

The statutory title of “section 7” of the Endangered Species Act (ESA) is “*Interagency Cooperation.*” While not often verbalized, cooperation is indeed the spirit and intent required to fulfill both the U.S. Fish and Wildlife Service’s (Service) and other Federal agencies’ ESA responsibilities to conserve listed species. The attached guidance is intended to facilitate this cooperation within the Northeast Region.

Federal agencies’ responsibilities under section 7 are twofold. Section 7(a)(1) directs all Federal agencies to carry out programs for the conservation of threatened and endangered species in consultation with the Service. Section 7(a)(2) directs each Federal agency to insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat. Through programmatic, landscape-level, strategic conservation planning, section 7(a)(1) consultation integrates the action agency’s conservation programs with its mission-driven programs and thereby contributes to recovery of listed species and increases the efficiency and effectiveness of action-specific section 7(a)(2) consultation. While some Federal agencies have developed effective programmatic conservation programs, many agencies have not. Consequently, section 7(a)(1) remains largely ignored, and opportunities to achieve better conservation more efficiently are foregone. The attached guidance is aimed at assisting Service and action agency staff in conducting successful section 7(a)(1) consultation to achieve these benefits.

The outcome of section 7(a)(1) consultation with an action agency is a programmatic, landscape-level, strategic plan. This program can both support recovery of listed species and facilitate section 7(a)(2) consultation by clearly identifying the conservation needs of the species and the actions and conservation measures that address these needs and by including preapproved design criteria incorporating these conservation measures. Early planning (before specific actions are fully designed) under section 7(a)(1) provides the action agency with the information needed to make appropriate adjustments to projects to avoid, minimize, and offset adverse effects to species while there is still the maximum flexibility to modify project designs. The strategic program also identifies opportunities for action agencies to implement proactive conservation. These benefits of section 7(a)(1) consultation will greatly facilitate and expedite the project-specific section 7(a)(2) consultation process.

Programmatic, landscape-level, strategic conservation planning is aligned with the Congressionally declared policy in section 2 of the ESA “that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.” 16 U.S.C. 1531(c)(1). Such planning also supports the purpose of the ESA in section 2 “to provide a means whereby the *ecosystems* upon which endangered species and threatened species depend may be conserved ...”

Additionally, the regulations implementing section 7(a)(2) specifically state that Federal action agencies should be given “appropriate consideration” for any beneficial actions taken by the Federal agency or applicant, including any actions taken prior to the initiation of consultation (see 50 CFR 402.14(g)(8)). This in concert with the Region’s *Project Priority Planning Guidance* gives the Region latitude in managing its limited consultation staff to prioritize those Federal agencies that engage in programmatic, landscape-level, strategic conservation planning. For both the Service and the action agency, this is the most staff-efficient and conservation-effective approach for achieving section 7 compliance.

In consideration of the conservation and ESA compliance efficiency benefits of section 7(a)(1) consultation, pursuant to ESA sections 2 and 7 and 50 CFR 402.14(g)(8), it is the policy of this Region, to engage, encourage, and support all Federal action agencies in the cooperative section 7(a)(1) consultation process and, in managing our limited consultation staff, prioritize those agencies that participate in the cooperative section 7(a)(1) consultation process to maximize our conservation efficiency and effectiveness.