



United States Department of the Interior

FISH AND WILDLIFE SERVICE
WASHINGTON, D.C. 20240

ADDRESS ONLY THE DIRECTOR,
FISH AND WILDLIFE SERVICE

Wilson
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In Reply Refer To:
FWS/OES 110.5

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Mr. John R. McGuire
Chief, Forest Service
U.S. Department of Agriculture
Washington, D.C. 20250

Dear Mr. ^{John:} McGuire:

As stated in our letter of November 29, 1978, to you, the Endangered Species Act Amendments of 1978 were signed into law by the President on November 10, 1978. All Endangered Species Program activities have been resumed and revisions to our new Interagency Cooperation Regulations are being developed to implement changes as required by the amendments. Reconsideration of the amendments since the November 29 letter has resulted in a determination that, pending publication of these new regulations, Section 7 consultation should be carried out according to the procedures in the present regulations, with the following exceptions:

1. Time Period for Consultation: The 60-day time limit will be adhered to whenever possible, especially for consultations which were interrupted on October 1st. Under the amendments, however, consultations must not exceed 90 days following receipt of a written request for initiation of consultation unless additional time is mutually agreeable between the agency and the Fish and Wildlife Service (FWS).
2. Biological Opinion Format: Opinions which reach a conclusion that an action is likely to jeopardize the continued existence of listed species or destroy or adversely modify Critical Habitat now must include a discussion of any "reasonable and prudent alternatives" which the FWS believes would avoid the jeopardy, destruction, or adverse modification, and which the consulting agency or permit or license applicant can take. Each opinion will detail how the agency action affects the listed species or its Critical Habitat and a summary of the information on which the opinion is based.



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3. Biological Assessment: No consultation can be initiated on a construction project for which a contract has not been entered into and construction begun as of November 11, 1978, until the agency has prepared a biological assessment on listed and proposed species that may be in the area of the proposed action, as determined by the FWS. The biological assessment must be completed by the agency within 180 days after the date initiated, unless such other period is mutually agreed to by the agency and the FWS, and transmitted to the FWS.

For purposes of providing interim guidance, the FWS considers construction projects to be any action conducted or contracted by the Federal agency designed primarily to result in the building or erection of such man-made structures as dams, buildings, roads, pipelines, and the like.

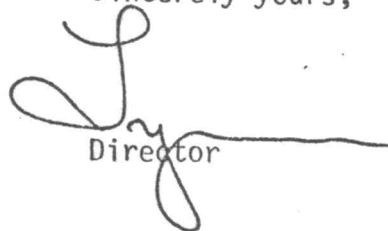
This includes consideration of major Federal actions such as permits, grants, licenses, or other forms of Federal authorization or approval which may result in construction and which significantly affect the quality of the human environment.

With these interim guidelines, the FWS anticipates orderly initiation and completion of Section 7 consultations until new regulations are developed to expand and formalize the new procedures.

When the changes to the Section 7 regulations implementing the amendments are proposed and published in the Federal Register, comments will be solicited from Federal agencies, institutions, organizations and individuals prior to any final rulemaking.

Questions regarding this subject should be directed to Mr. Robert Jacobsen, Chief, Branch of Management Operations (202/235-2760).

Sincerely yours,



Director

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

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FEB 16 1979

REPLY TO: 2630 Habitat

SUBJECT: New Endangered Species Regulations

TO: Regional Foresters, Station Directors, Area Directors,
and WO Staff Directors



Enclosed is a letter from the Fish and Wildlife Service (FWS) which provides interim guidance for formal consultation under the new Endangered Species Act Amendments of 1978, pending publication of new regulations.

Most of our consultations will continue to be conducted under present regulations and directions; however, the Amendments set up a new procedure for construction projects. Construction projects are defined in the enclosed letter. Projects not meeting this definition are excluded from the new construction project consultation procedure.

As interim direction, you should consider all actions which will result in construction and which require an EIS as meeting the construction project definition. In addition, construction actions for which no EIS is required but which (a) are Regionally significant, (b) have a high potential for affecting a listed species, or (c) are highly controversial, may, at your discretion, be considered a construction project for these purposes.

The following procedure will be used for Endangered Species Act, Section 7 Consultation, until further notice:

1. Determine if the proposed action is a construction project.
2. If it is not, but still may affect a listed species, consult using the Interagency Cooperation Regulations issued in the FEDERAL REGISTER, January 4, 1978, and subsequent Forest Service directions.
3. If the proposed action is a construction project, as defined in this letter, use the following procedure:
 - a. Prior to implementing the proposed action, request in writing, from FWS regional office, a list of threatened, endangered and proposed species which occur in the project

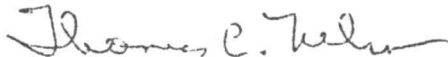
area. Include with the request an adequate map or description of the project location and a list of the classified and proposed species which you already know occur there. This step must be accomplished even if you know there are no species occurring in the project area.

b. If the FWS advice indicates that listed or proposed species may be present in the affected area, a biological assessment must be made. The exact nature of this assessment is not specified, but must include a comprehensive survey to identify any species which may be affected by the construction project and an evaluation of the nature and extent of impact that the proposed project may have on such species. Any necessary studies to determine the nature and extent of impacts must be borne by the Forest Service.

c. If the biological assessment indicates that there are no listed species present which may be affected, there is no need to consult further and the project may proceed.

d. If the biological assessment indicates that listed species are present which may be affected, consultation must be requested from the FWS. The biological assessment must be supplied to the FWS along with the request for consultation.

Please note that although biological assessments consider both listed and proposed species, the FWS can, legally, formally consult only on the listed species. Informal consultation can take place on proposed species. The purpose of considering proposed species in biological assessments is to identify and consider species which may be a problem or may be listed during the planning or construction of significant construction projects.



THOMAS C. NELSON
DEPUTY CHIEF

Enclosure

Limited Distribution

