

Interagency consultation under the Endangered Species Act

Improving the Section 7 interagency consultation process under the Endangered Species Act (ESA) would benefit threatened species, critical habitat and agency efficiencies. Tailoring the process used to ensure protection of species and their habitats to specific on-the-ground situations would free up valuable money and manpower so that more can be done to protect these national treasures.

The project-level ESA consultation process must be updated and streamlined. The consultation system used today creates unneeded and redundant processes which consume limited budgets better used to expand current protection efforts. Limited agency resources would be better spent assuring projects are designed and implemented in ways that benefit sensitive species, rather than engaging in paperwork processes. A simple letter of concurrence such as those used in “no effect” situations should suffice.

In addition, the informal consultation process under ESA section 7(a)(1) should be clarified to include consideration of short term versus long term effects. In many cases, an action may create a very short term adverse effect but will result in a very positive long term benefit for the listed species. For example, the replacement of a culvert may put a small amount of sediment into a stream causing a very short term negative impact; if the culvert were not replaced, it would have a high likelihood of failure which would release large amounts of sediment into the stream. These actions should be viable candidates for the informal consultation process. In this way, the total benefit to a species can be appropriately factored into individual projects.

Broad scale agency land management planning has no direct or indirect effects on species or habitat. Interagency consultation on these actions is increasingly becoming neither practicable nor necessary. The Administration should direct natural resource administering agencies, such as the Forest Service and Bureau of Land Management, and the regulatory agencies, the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), to undertake rulemaking for the consultation process that recognizes the fact that consultation at the broad scale land management planning level differs from project-level consultations and provides little benefit to threatened or endangered species or their habitats.

Recommendations:

Updating the Section 7 interagency consultation process under the Endangered Species Act would benefit threatened species, critical habitat and agency efficiencies.

- Current project level consultation strategies should be refined to assure that outcomes will pass judicial muster.

- When an action is determined “not likely to adversely affect” a listed species or its critical habitat, FWS and NMFS should be authorized to approve the project without a lengthy process.
- Formal interagency consultation should not be required at the landscape planning level and should be deferred until project-level decisions are being considered.
- The counterpart regulations for National Fire Plan projects have proven to be an effective tool to maximize limited resources and preserve species protection. They should be maintained.
- The actual effect of the new Section 7 joint consultation rules on both species protection and appropriate use of limited resources should be carefully considered before any revisions are made.

Consultation issues with other agencies, such as the Environmental Protection Agency, must also be addressed. For example, the registration of pesticides and herbicides has become unnecessarily complicated by the inability of the three agencies to work together.

The American Forest Resource Association (AFRC), headquartered in Portland, Oregon, represents nearly 80 forest products businesses and forest landowners in twelve states, primarily in Washington, Oregon, California, Idaho and Montana. Its mission is to create a favorable operating environment for the forest products industry, ensure a reliable timber supply from public and private lands, and promote sustainable management of forests by improving federal laws, regulations, policies and decisions that determine or influence the management of all lands. For information, contact Tom Partin 503 222 9505 tpartin@amforest.org

November, 2009