



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Southwest Region  
501 West Ocean Boulevard, Suite 4200  
Long Beach, California 90802- 4213

MAR 13 2006

TO: Russell Strach, Assistant Regional Administrator for Protected Resources  
Southwest Region Protected Resources Division Supervisors and Staff

FROM: Rodney McInnis   
Regional Administrator

SUBJECT: Quality Assurance Plan for ESA Section 7 Consultations

The December 15, 2005, Delegation of Authority for Section 7 of the Endangered Species Act (from Dr Hogarth to Regional Administrators) establishes and clarifies procedural requirements for Regional Offices responsible for carrying out section 7 activities. One requirement of the delegation is that each Regional Administrator shall:

“...develop and implement a Quality Assurance Plan, consistent with the Improvement Plan for Section 7 consultations under the ESA, for all consultations undertaken in their Region...” The Plan shall establish procedures and protocols for review and clearance of consultation documents and must be consistent with this directive.” “Any instance of deviation from the Plan shall be documented in the records of the Region...”

The purposes of the delegation and improvement plan are to provide for effective and efficient agency implementation of section 7 consultation and to improve the quality of those consultations. The delegation and related improvement plan are important, and I expect all Regional staff involved in section 7 activities to read and understand these documents and pay particular attention to implementation. This memorandum is the Southwest Region’s (SWR) Quality Assurance Plan (Plan) that establishes a Regional program to support the effective and efficient conduct of section 7 consultation and the requirements for review and clearance of consultation documents in a manner consistent with the 2005 delegation and improvement plan. Consistent with the delegation, this Plan identifies:

1. Guidance and training on section 7 consultations and consultation documents that will be made available to regional staff and management;
2. General standards of review for section 7 consultation documents;
3. Requirements for General Counsel - Southwest (GC) review or waiver of consultation documents;
4. Roles and responsibilities of consultation staff and management in the conduct of consultations, preparation of consultation documents, review of consultation documents and maintenance of administrative records and regional/national databases; and,
5. Provisions for annual review of the regional section 7 program.

As noted in the delegation, the Plan may be modified if directed by the Assistant Administrator for Fisheries or updated as new agency guidelines/standards are implemented. **Any deviation**



**from this Plan must be approved in advance by the Regional Administrator and must be documented in Regional records or the record for the specific consultation, as appropriate.**

Within the SWR, ESA consultation staff and management include consultation biologists, team leaders, supervisors, Area Office Supervisors, and the Assistant Regional Administrator for Protected Resources (ARA). The delegation requires the appointment of a Regional Section 7 Coordinator. Penny Ruvelas will remain the Regional Section 7 Coordinator. In addition, the SWR will continue to rely on Area Office Section 7 Coordinators in the Arcata, Sacramento, and Santa Rosa Area Offices. GC attorneys provide legal advice and review of section 7 consultations.

## **I. STANDARD GUIDANCE AND TRAINING**

### **A. Guidance**

To support SWR staff and management in the conduct of quality section 7 consultations, guidance and training must be readily available. At the national level, NOAA Fisheries Service, Office of Protected Resources will be working to revise the ESA Consultation Handbook, develop guidance documents, and provide or make available required basic and advanced section 7 training for staff and supervisors.

As needed, SWR will develop and provide specific guidance, examples, or templates to regional staff for their use in section 7 consultations. For example, guidance and checklists have been provided to consultation biologists by the SWR Records Manager, GC Southwest, and the Regional Section 7 Coordinator for use in the creation and maintenance of administrative records. Guidance on the preparation of concurrence letters has also been provided.

To facilitate access to current section 7 guidance, the SWR will establish an intranet website to provide links to national and regional guidance and policy documents, templates, examples, relevant case law interpretations provided by GC, and issued biological opinions. This website shall be maintained and updated by the Regional Section 7 Coordinator and will be coordinated and linked with similar websites that may be administered by the Office of Protected Resources.

### **B. Training**

The improvement plan identifies three tiers of training to ensure consultation staff and managers can (a) comply with applicable legal requirements, (b) meet demands for quality section 7 consultations, and (c) maintain proficiency in the conduct of consultations. Basic section 7 training will be made available to all consultation staff, and is required for new staff *within their first year of employment*. As needed, advanced section 7 training will be made available to experienced consultation staff. In addition, training for supervisors overseeing consultation staff will be provided. To comply with the quality and frequency of continuing education specified in the improvement plan, the Regional Section 7 Coordinator will work with the Office of Protected Resources to formulate and schedule effective training programs for new and current employees,

annual workshops, and other means of continuing education for consultation biologists, Section 7 Coordinators, and supervisors.

## II. STANDARDS OF REVIEW

Procedural and substantive standards applicable to the consultation process are drawn from the ESA (16 USC 1531 *et seq.*) and applicable regulations (50 CFR 402), section 706 of the Administrative Procedure Act (APA), the ESA Consultation Handbook, agency guidance and policies, and guidance provided from the Regional Directorate. In addition, publicly disseminated<sup>1</sup> ESA consultation documents are also subject to the Data Quality Act (DQA), and should have a complete DQA certification in the administrative record.

All section 7 consultation documents (i.e., concurrence letters and biological opinions) will have at least one level of review prior to signature. Document reviews will be used in a constructive manner to: (1) meet QA/QC standards prior to document finalization, and (2) coach, encourage, teach, and improve our consultation process and the production of consultation documents. Documents will be reviewed for:

1. Consistency with applicable policies, procedures, and mandates;
2. Scientific accuracy;
3. Legal sufficiency;
4. Clear, effective and efficient communication of analysis and reasoning; and
5. Compliance with required format and style<sup>2</sup> and tone.

The specific standards of review will be those found in the best available guidance. I recognize that guidance for ESA section 7 consultations will be dynamic. For example, the section 7 improvement plan requires that the 1998 ESA Consultation Handbook be updated and revised to address advances and changes in policy, law, and technical and procedural knowledge. NOAA Fisheries Service, Office of Protected Resources and the SWR will coordinate and prepare national and regional guidance on the conduct of section 7 consultations and the preparation of consultation documents. This guidance will be available in hard copy or electronic copies provided by email or on regional or national websites. The requirements and guidance contained in those documents will be the standards that consultation documents must meet. All staff involved in preparing and reviewing consultation documents must be familiar with the information provided in this best available guidance.

---

<sup>1</sup> Publicly disseminated means information that has been provided for public distribution or sharing of information by an agency by printed, electronic, or other means. ESA section 7 consultation documents that are posted on a public internet website are publicly disseminated.

<sup>2</sup> The ESA Consultation Handbook, the "Style Manual" issued by the Government Printing Office, and the SWR Correspondence Manual all provide guidance on proper writing style, including format of documents. Other guidance and templates will be provided to SWR staff as they become available.

### **III. LEGAL REVIEW**

In accordance with the section 7 delegation, GC will review all informal consultation (concurrence letters) and formal consultation (biological opinions) documents, unless review is waived. In accordance with the delegation of section 7 authority from the Assistant Administrator to the Regional Administrators and memoranda from GC outlining the process for waiving review, legal review of certain types of biological opinions and letters of concurrence can be waived. The waiver will be documented in either a separate memo or on the appropriate clearance sheet with reference to GC's general waiver of legal review of certain section 7 documents.

GC review of documents shall focus on whether a consultation document is legally sufficient, as defined in the section 7 delegation. Documents meeting these criteria will be cleared by GC. GC will:

1. Strive to complete reviews or clear documents as quickly as possible;
2. Provide the consultation biologist written comments on the legal sufficiency of the document and necessary measures to meet the standard;
3. Submit comments that have overarching or broad application to the Regional Section 7 Coordinator for dissemination to all consulting biologists; and
4. Inform the Regional Section 7 Coordinator of significant new legal developments affecting consultations.

### **IV. SECTION 7 PROGRAM STAFF RESPONSIBILITIES**

To ensure quality consultations and consultation documents, all SWR section 7 staff and management must maintain an open exchange, in the spirit of teamwork and partnership, throughout the consultation and writing process. In addition, all staff must comply with procedural requirements for the review and clearance of documents, create and maintain administrative records, and enter data into database systems. The responsibilities of consultation biologists, team leaders, supervisors, Area Office Section 7 Coordinators, the Regional Section 7 Coordinator, and the ARA in clearance, review and communication on section 7 documents are described below.

The term "clearance" indicates that the reviewer finds that the consultation document satisfies the standards (procedural, technical, or legal) for which they have reviewed the document. The reviewer signs a clearance sheet for the consultation document when the document meets standards or will meet standards after revisions are made.

In instances where technical, procedural, or legal issues cannot be resolved during the typical review and feedback process, the reviewer shall prepare an elevation statement describing the unresolved issue(s) to initiate and facilitate resolution by next-level management. After the elevated issue has been resolved and documented in the project file, the reviewer must decide whether to sign or not sign the clearance sheet. Regardless, the document will still proceed

through the clearance process.

### **A. Consultation Biologists**

The consultation biologist preparing draft consultation documents should be trained in the statutory and regulatory requirements for section 7 consultation, the preparation of section 7 consultation documents, and aware of the policies, procedures, and guidance that apply to section 7 consultations. Additionally, the consultation biologist will:

1. Attend basic section 7 training within the first year of employment, in accordance with the 2005 delegation;
2. Work with their supervisor and team leader, to manage information, time, and other resources as necessary to ensure completion of a draft consultation document that is scientifically and legally defensible;
3. Ensure consultations and consultation documents are consistent with applicable agency policies, procedures, guidance, and templates;
4. Evaluate the need for early elevation of controversial actions and advise their team leader (if they have one) and supervisor accordingly;
5. Coordinate, as necessary, with other biologists, other programs, other regions, and other agencies;
6. Prepare well-written draft consultation documents with proper attention to technical information, as well as grammar, spelling, punctuation, tone, and proper sentence structure;
7. Revise documents in accordance with comments provided during the section 7 review process;
8. Retain all documents used in preparing the consultation document or referenced in a consultation file for use as necessary in preparing an administrative record; and
9. Make timely entries and maintenance of consultation data into the Regional Records Management System (RMS) or Public Consultation Tracking System (PCTS) databases as per the database business rules. All data required for the PCTS delegation report for consultations completed in the previous month must be entered into RMS before the second Friday of the current month.

### **B. Team Leaders/First-Line Supervisors**

Team leaders and/or first-line supervisors are responsible for providing technical and section 7 procedural guidance to consultation biologists on their team – note, in some offices this role may be filled by the Area Office Section 7 Coordinator or the Area Office Supervisor. They will:

1. Review and clear draft concurrence letters prior to submission to GC;
2. Inform Area Office Supervisors of concurrence letters that are nearing finalization;
3. Ensure that draft letters are reviewed for content, technical sufficiency, format, style, tone and quality;

4. Verify that consultation staff are creating and maintaining administrative records for each consultation;
5. Advise the Area Office Supervisor and GC of letters that: a) present significant legal issues, b) are controversial or likely to be subject to litigation, or c) address a "new" activity/area that has not been subject to a prior consultation; and
6. Provide guidance on, and review of, formal consultations as needed.

### **C. Area Office Section 7 Coordinators**

Each Area Office has an Area Office Section 7 Coordinator who will:

1. Advise consultation staff on consultation procedures and policy;
2. Work with consultation staff during consultations, as requested, to assist in the conduct of effective and efficient analyses and preparation of quality consultation documents;
3. Review and clear draft Opinions;
4. Focus their review on the written analytical support for the Opinion's conclusions and the incidental take statement but also be sensitive to content, technical sufficiency and quality;
5. Submit drafts of routine Opinions to GC for review or waiver;
6. Submit drafts of non-routine Opinions that are highly controversial, novel, or precedent-setting to the Regional Section 7 Coordinator for review;
7. Inform their office supervisor of Opinions that are nearing finalization;
8. Coordinate with the Regional Section 7 Coordinator on individual consultations as well as section 7 program issues and needs; and
9. Advise their supervisor, GC, and the Regional Section 7 Coordinator of Opinions that a) present significant legal issues, b) are controversial or likely to be subject to litigation, or c) address a "new" activity/area that has not been subject to a prior consultation.

If the supervisor, Regional Section 7 Coordinator, or GC identify issues during review of the draft Opinion that cannot be resolved by the consultation biologist or Area Office Section 7 Coordinator, the issues will be referred to the ARA and the Regional Administrator as necessary for resolution. The Area Office Section 7 Coordinators also will identify and recommend training and policy needs to their Office Supervisor, ARA and the Regional Section 7 Coordinator, and conduct and evaluate training as requested.

### **D. Area Office Supervisors**

The supervisor responsible for the program area or geographic area of a consultation request will:

1. Ensure consultations in their respective area of responsibility are completed in accordance with the standards in this Plan on a timely basis;
2. Ensure that consultation staff are creating and maintaining administrative records for each consultation;

3. Direct consultation biologists during interactions with the action agency and other interested parties and preparation of each draft consultation document, as needed;
4. Ensure all consultation documents are reviewed including GC review, as appropriate;
5. Remain aware of informal and formal consultation documents in preparation or under review, and elevate questions and issues of controversy to the ARA, Regional Section 7 Coordinator or GC, as appropriate;
6. Ensure that draft Opinions that present novel, complex or controversial issues are submitted to the Regional Section 7 Coordinator for review;
7. Determine, in consultation with the ARA, if a consultation request raises new scientific issues that warrant involvement and possible independent review;
8. Ensure that highly controversial, contentious or potential jeopardy consultations are brought to the attention of the ARA, GC, and Regional Section 7 Coordinator as soon as possible in the consultation process;
9. Ensure that staff attend basic section 7 training within the first year of employment, in accordance with the 2005 delegation; and
10. Authorize staff training to meet the improvement plan training goal that consultation staff can (a) comply with applicable legal requirements, (b) meet demands for quality section 7 consultations, and (c) maintain proficiency in the conduct of consultations, and maintain records of staff training.

#### **E. Regional Section 7 Coordinator**

The Regional Section 7 Coordinator serves in an advisory capacity to the Regional Administrator and other Regional leadership on section 7 issues; advises Regional staff on the policies, procedures, and guidelines for the conduct of section consultations and preparation of consultation documents; and will provide recommendations on unresolved issues to the Regional Administrator and ARA as appropriate. The Section 7 Coordinator will:

1. Serve as Regional interface with headquarters on broad ESA section 7 regulatory, policy and legal issues;
2. Disseminate information, guidance and advice from headquarters to supervisors and Area Office Section 7 Coordinators on section 7 issues;
3. Disseminate legal information and comments from GC that have broad application;
4. Advise consultation staff on consultation procedures and policy;
5. Work with consultation staff during consultations, as requested, to assist staff in conducting effective and efficient analyses and preparation of quality consultation documents;
6. Review and clear highly controversial, precedent-setting, or novel Opinions and any other consultation documents the Regional Administrator or ARA deems appropriate to ensure consistent application of ESA standards and procedures – and submit those Opinions to GC for their review;
7. Provide comments on those Opinions to the consulting biologist and Area Office Section 7 Coordinator, and provide those comments with broad section 7 consultation application to all consultation staff and supervisors;

8. Develop and disseminate, in conjunction with the Office of Protected Resources and other Regions, as appropriate, guidance, templates, and policy for the conduct of section 7 consultations and preparation of consultation documents; and
9. Serve as a coordinator for training and policy matters, including annual reviews as described in the Section 7 Improvement Plan, with the Office of Protected Resources.

#### **F. Assistant Regional Administrator**

The ARA will:

1. Establish priorities among consultations, based on the potential impact on listed species, to ensure adequate time to meet the requirements of this Quality Assurance Plan;
2. Ensure the quality and consistency of Regional consultations;
3. Ensure consultation staff and management adhere to regional review processes and requirements;
4. Ensure Area Offices have established and use systems for the creation and maintenance of consultation administrative records;
5. Review and clear formal consultation documents;
6. Notify the Regional and Deputy Regional Administrators of all consultations that are likely to reach a jeopardy conclusion, or that are controversial or contentious, as soon as possible in the consultation process; and
7. Ensure that tracking data and information for consultations are entered into RMS or PCTS in a timely fashion.

#### **V. ANNUAL REVIEWS**

This Plan will be reviewed annually as part of the section 7 delegation annual review and may be modified as a result of that review or if directed by the Assistant Administrator for Fisheries. The Plan also will be updated annually as new agency guidelines/standards are implemented.

On an annual basis, randomly selected consultation documents will be subjected to national and regional review to assess compliance with this Plan. Annual review procedures established by headquarters are forthcoming. Within the region, the Regional Section 7 Coordinator will review a random set of clearance sheets prepared for each consultation for compliance with procedural requirements for review and clearance. In addition, the Regional Section 7 Coordinator will review a random set of consultation documents for compliance with the substantive standards of review as described in this Plan and in the best available guidance, and report the results to the Area Office Supervisors and ARA for Protected Resources. The Regional Section 7 Coordinator will use the results of the reviews to provide updated guidance to improve regional compliance with procedural and substantive requirements of section 7.