

ES&H RESPONSIBILITIES

DATE: 10/29/2008

SUBJECT: ENDANGERED SPECIES ACT COMPLIANCE PROGRAM

1. PURPOSE. This document addresses responsibility and accountability and provides administrative guidance for compliance with the Endangered Species Act (ESA) to the Oak Ridge Office (ORO).
2. APPLICABILITY. The provisions of this document apply to ORO Principal Staff. Compliance with the ESA, including consultation, conference, and other procedures under Section 7 of the ESA, usually are consolidated with the National Environmental Policy Act (NEPA) process.
3. RESPONSIBILITIES.
 - a. NEPA Compliance Officer (NCO).
 - (1) Undertakes consultation with the U.S. Fish and Wildlife Service (FWS) including:
 - (a) Initial informal consultation.
 - (b) Submission of Biological Assessment (BA) to FWS, if requested.
 - (c) Any additional informal or formal consultation with FWS, if needed.
 - (2) Transmits BA and associated NEPA document to the FWS.
 - b. NEPA Document Manager (NDM).
 - (1) Interfaces with contractors to have the draft informal consultation letter(s) and the BA prepared, if requested.
 - (2) Reviews the draft consultation letter(s) and BA for required information and interfaces with contractors to have any necessary revisions made.
 - (3) Transmits the draft consultation letter(s) and BA, if required, to the NCO.
 - (4) Supports the NCO in all consultations.
4. REFERENCES.
 - a. National Environmental Policy Act of 1969 (PL 91-190). Requires Federal agencies to consider environmental effects in the decision-making process.
 - b. Endangered Species Act of 1973 (PL 93-205). Section 7 outlines the procedures for Federal interagency cooperation to conserve Federally-listed species and designated critical habitats.
 - c. Implementing Regulations. 10 CFR Part 1021 Department of Energy National Environmental Policy Act Implementing Regulations.
 - d. Implementing Regulations. 50 CFR Part 402, Interagency Cooperation – Endangered Species Act of 1973, as amended, Joint Regulations on Endangered Species. This part establishes interagency cooperation procedures under §§ 7(a)-(d) of the ESA. Federal agencies are granted authority and given requirements to follow regarding endangered or threatened species of fish, wildlife, or plants and habitats of such species that have been listed as critical in § 7(a). Federal agencies are here encouraged to carry out conservation programs for listed species. In § 7(a)(2), agencies are directed to insure that any action it authorizes, funds, or carries out must

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- not jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. Federal agencies must also confer with the Secretary of the Interior when any action is likely to adversely affect proposed critical habitat or a proposed threatened or endangered species directly. Subpart B – Consultation Procedures Section 402.12, Biological Assessments, addresses the requirements of a BA. A BA shall evaluate the potential effects of a proposed action on listed and proposed species, and designated and proposed critical habitat and determine whether any such species or habitat are likely to be adversely affected by the action. A BA is used in determining whether formal consultation or a conference is necessary.
- e. Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements. These recommendations should materially aid those responsible for preparing and reviewing NEPA documents in focusing on significant environmental issues, adequately analyzing environmental impacts, and effectively presenting the analysis to decision makers and the public. Guidance is presented for compliance with the ESA.
 - f. Environmental Assessment Checklist. Assists DOE NEPA practitioners in the preparation and review of DOE environmental assessments and provides guidance on compliance with the ESA.
 - g. Environmental Impact Statement Checklist. Assists DOE NEPA practitioners in the preparation and review of DOE environmental impact statements and provides guidance for compliance with the ESA.
 - h. Endangered Species Act Consultation Handbook, Procedures for Conducting Section 7 Consultations and Conferences. U.S. Fish and Wildlife Service and National Marine Fisheries Service. Final March 1998. This handbook was primarily developed to aid FWS and National Marine Fisheries Service biologists implementing the Section 7 consultation process. The purpose of the handbook is to provide information and guidance on the various consultation processes outlined in the regulations. Additionally, the handbook will ensure consistent implementation of consultation procedures by those biologists responsible for carrying out Section 7 activities. Chapters of the handbook pertain to major consultation processes, including Informal, Formal, Emergency, and Special Consultations, and Conferences.
 - i. Incorporating Biodiversity Considerations Into Environmental Impact Analysis Under the National Environmental Policy Act. Provides background on the complex subject of biodiversity, outlines some general concepts that underlie biological diversity analysis and management, describes how the issue is currently addressed in NEPA analysis, and provides options for agencies undertaking NEPA analyses that consider biodiversity. Addresses rare and ecologically important species including species not formally listed under the ESA or on state threatened and endangered species lists.
5. DEFINITIONS. See 50 CFR Part 402.02, Interagency Cooperation – Endangered Species Act of 1973, as amended, Definitions.