UNITED STATES DEPARTMENT OF THE INTERIOR
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Instruction Memorandum No. AZ-2003- 012
Expires: 9/30/2003

To: Field Managers and Deputy State Director, Resources

From: State Director

Subject: ESA Section 7 Consultation/Conference on Existing Land Use Plans
DD: 9/30/2003

Purpose: This Instruction Memorandum transmits a new policy designed to keep Arizona BLM current with its ESA section 7 consultations on existing Land Use Plans (LUPs).

Background: Arizona BLM has had difficulty keeping section 7 consultations for its LUPs current when new species are listed as threatened or endangered or when new critical habitat is designated. Generally, we have waited until some time after a final rule is published, officially listing a species and/or designating critical habitat, before complying with section 7. In part, this may be attributed to not anticipating listings or the need to consult on LUPs during the Annual Work Planning process. In the last two years, environmental groups have been very timely with both Freedom of Information Act (FOIA) requests and notices of intent to sue under the Endangered Species Act shortly after a species is listed or critical habitat is designated. When a species or critical habitat is proposed for Federal listing or designation, the probability is very great that a final rule will follow, listing the species and/or designating the critical habitat. This new policy will ensure that we are in compliance with section 7 at the earliest possible time, by performing conferences[1] on proposed species or critical habitat before a final rule is published.

In order to be in section 7 compliance when new species are listed or critical habitat is designated, we need more flexibility in terms of time and we need to be able to plan our work. Normally, there is a one-year period between the time a species is proposed for listing and when the final rule is published. Even when the Fish and Wildlife Service (Service) must propose a species for listing and/or critical habitat for designation under a court-ordered shorter time frame,

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1 Conferences are equivalent to the consultations we do for listed species, but are performed for proposed species or critical habitat (50 CFR 402.10, MS 6840.21E4).

taking action during the period the species is proposed for listing gives us more time and flexibility. Completing section 7 conferences before a species is listed and/or critical habitat is designated assures conservation of the species, minimizes the potential for impacts to affected programs, and reduces our legal vulnerability.

Policy/Action: The State Office (AZ-930) shall inform Field Offices of species that are scheduled for listing package development and proposed rules by the Service during the Preliminary Target Allocation/Annual Work Planning process each year (no later than August). This will give Field Offices the opportunity to budget time in their Annual Work Plans for anticipated work needed to confer on LUPs with proposed species or critical habitat.

The State Office (AZ-930) shall inform Field Offices when a species or critical habitat is actually proposed for listing or designation. Within 30 days of publication of a proposed rule, an Instruction Memorandum (IM) shall be issued, after coordination with staff in the appropriate Field Offices, which assigns a due date for development of effects determinations for their LUPs (normally 90-120 days after issuance of the IM). In cases where a proposed species or critical habitat occurs in more than one Field Office and more than one LUP is involved, the IM will also identify a team and lead for a consolidated (batched) LUP review and conference, as appropriate. Effects determinations shall be made either through a new biological evaluation or an addendum to the previous biological evaluations for the LUPs.

Request for formal conference on proposed species or critical habitat shall include a request for a conference opinion, which is easily turned into a biological opinion should the species become Federally listed or critical habitat become designated through a final rule.

Concurrent with the review of LUPs, Field Offices should screen their ongoing actions to ensure compliance with section 7 of the ESA and confer, as appropriate.

Time frame: This policy takes place immediately.

Manual/Handbook Sections Affected: Supplements Manual Section 6840.

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