

Consultation & Habitat Conservation Planning

Program Overview

As the primary customer service component of the Endangered Species Program, the Consultation program makes an important contribution to the Service's "Biological Expertise to Others" (resource use) mission goal as well as the Service's "Conservation Leadership for Fish, Wildlife, and Their Habitats" (resource protection) mission goal. The Consultation program element includes two primary components, the Section 10 Habitat Conservation Planning program and the Section 7 Consultation program. Through the Habitat Conservation Planning program, the Service works with private landowners and local and state governments to develop Habitat Conservation Plans (HCPs). By working with non-federal entities to develop and implement HCPs, the Service identifies conservation measures to benefit species and habitats, thereby promoting the stabilization and improvement of endangered, threatened and at-risk species. Through the Section 7 Consultation program the Service works with federal agencies and project applicants to ensure the activities they carry out, fund, or authorize are compatible with the conservation needs of listed species. The Service's Consultation program embodies "the Four C's," conservation through cooperation, consultation, and communication. Service personnel actively work with state and local partners to achieve common conservation goals.

The Department has recently finalized its Strategic Plan, and the Service has proposed mission goals and associated long-term goals consistent with the Strategic Plan. The Consultation program contributes directly to the Department's strategic goal to sustain biological communities on Department managed and influenced lands, in the Resource Protection mission component, and the Service's associated proposed mission goal of "Conservation Leadership for Fish, Wildlife, and Their Habitats." The Department's relevant end outcome measure is the percent of species listed a decade or more that are in stable or improving condition. In addition, the Consultation program contributes to the Department's Resource Use strategic goals, through the Service's proposed mission goal of "Biological Expertise to Others." Under this mission component, the Department's relevant end outcome goal is to manage or influence resource use to enhance public benefit and promote responsible use.

The Endangered Species Program is developing draft long-term and annual performance measures to evaluate our success in meeting these goals.

Section 10(a)(1)(B) - Habitat Conservation Planning

Section 10(a)(1)(B) of the Endangered Species Act (ESA) provides for the permitting of the incidental take of threatened and endangered species. The Service's incidental take permit program is a flexible process for addressing situations in which a property owner's otherwise lawful activities might result in incidental take of a listed species. Using the best scientific information available, non-federal entities develop HCPs as part of the application requirements for an incidental take permit. The HCP program encourages applicants to explore different methods to achieve compliance with the ESA and choose an approach that best suits their needs while addressing ESA compliance. For instance, electrified fences surrounding many of the California Department of Corrections Facilities cause mortality to species as a result of contact with the fence. Concerned that a listed species would eventually encounter the fence, the Department of Corrections worked with the Service to incorporate measures surrounding the fence that minimizes the possibility of contact. The HCP developed by the State of California Corrections facilities continued on-going efforts to minimize impacts to eleven listed and sensitive species including the bald eagle, San Joaquin kit fox and desert tortoise while maintaining the ability to safeguard corrections facilities throughout California.

The HCP program's major strength is that it encourages locally developed solutions to wildlife conservation while providing certainty to permit holders. Local entities and private landowners are given assurances that they will not be required to make additional commitments of land, water, or money, or be subject to additional

restrictions on the use of land, water, or other natural resources, for species adequately covered by a properly implemented HCP.

HCPs continue to increase in complexity, size, and number of species addressed. While the program has existed since 1983, it has grown in recent years with more than 39 million acres of land covered by HCPs at the end of fiscal year 2003, compared to about 6 million acres at the beginning of fiscal year 1999. HCP planning areas can be as small as a single, private residential property of less than an acre, or as large as entire counties or, in some cases, entire states. These large HCPs address a variety of activities including commercial, residential, and infrastructure development, and management activities associated with natural resource use and extraction. The creative and flexible nature of the HCP program provides solutions for all participants, from states to small landowners.

Integration of the HCP process with local land-use planning occurs more frequently. Many local governments recognize the advantages of integrating planning needs and have taken the planning approach beyond just endangered species issues to comprehensively address environmental issues. As a result, these integrated, comprehensive planning efforts have become more complex and require a large amount of time and money to develop. However, in the long run, incorporating the HCP incidental take permit process into the more comprehensive local planning efforts saves local landowners time in obtaining permits for their projects.

To foster landscape- and ecosystem-level approaches to planning, the Service encourages applicants for Section 10 permits to address multiple species in their HCPs, including proposed and candidate species as well as listed species. Including candidate and at-risk species in their HCPs gives landowners and local governments the opportunity to take a more holistic approach to conservation and to minimize future conflicts. This type of regional planning benefits numerous species within an ecosystem and streamlines ESA compliance for the small landowners within the planning area. In addition, by covering candidate and at-risk species in an HCP, landowners can avoid potential future disruptions in project planning and implementation, should one or more of these covered, unlisted species be listed.

The HCP program has rapidly expanded in the last five years. Nearly 280 HCPs are currently under development or awaiting approval. In addition to participating and facilitating the development of large, multi-species plans, the Service provides technical assistance to small landowners who cannot afford to hire consultants or staff to provide biological expertise. While we place a high priority on large HCPs that cover many species and include many partners, we recognize the need to continue to provide technical assistance to small landowners as well.

Service involvement in the HCP process does not end once an HCP is approved. We often participate on HCP implementation steering committees, and provide additional technical support for managing and operating conservation programs. We also work with permittees to monitor compliance as well as process HCP amendments and renewal requests. In addition, we monitor HCPs to determine whether the mitigation strategies are effective and whether the anticipated effects are actually occurring, and assist permittees in implementing their adaptive management strategies.

Adaptive management is used by applicants and the Service to develop effective, flexible HCPs. Creating results-based HCPs rather than simply fulfilling a list of prescriptive actions that not only increases flexibility for the permittees, but promotes the desired biological outcomes. In addition, a results-oriented program (based on an adaptive management strategy) actually provides certainty to the permittees by establishing the framework to modify the HCP when necessary. Results are periodically assessed, and, if shortcomings are evident, previously agreed-upon alternative strategies are implemented, thereby reducing conflict between the Service and permittees regarding ESA compliance.

Section 7 - Interagency Consultation

Section 7 of the ESA requires federal agencies to use their authorities to further the purposes of the ESA, including an obligation to ensure that activities they authorize, fund, or carry out do not jeopardize the continued existence of listed species or destroy or adversely modify their designated critical habitat. For example, U.S. Forest Service (USFS) or Bureau of Land Management (BLM) approval of livestock grazing on federal lands, or the U.S. Army Corps of Engineers approval of discharge of fill material into wetlands, requires Section 7 consultation when these activities may affect listed species.

Because Section 7 applies to actions federal agencies carry out, fund or authorize, non-federal applicants play a large role in the consultation process. Many of the federal actions subject to Section 7 consultation, such as grazing allotments or timber sales on federal lands and permits issued under the Clean Water Act, involve non-federal applicants. Section 7 of the ESA and its implementing regulations provide non-federal applicants a role in all phases of the interagency consultation process. A prospective applicant may request federal agencies to conduct early consultation to discover and attempt to resolve potential conflicts early in the planning stages of a project. The Service and the authorizing federal agencies rely on the participation of non-federal partners to develop methods for providing species protection consistent with their projects.

Coordination between the Service, other federal agencies, and their applicants during consultation is critical to ensure that the design of projects do not jeopardize listed species or destroy or adversely modify designated critical habitat. The Service works with the USFS, BLM, and a variety of local governments to implement hazardous fuels reduction projects to reduce the risk of catastrophic wildfires while ensuring these projects did not jeopardize endangered and threatened species. In some instances, these fuels reduction projects can have an overall benefit to listed species that are themselves vulnerable to catastrophic wildfire; the consultation process helps ensure these benefits are achieved while minimizing the possible immediate adverse impacts of the projects on listed species.

The Service actively encourages federal agencies and their applicants to informally consult as early as possible in the project planning process for the purpose of identifying and resolving endangered species conflicts while the project design is still flexible. The Service informally resolves the vast majority of consultations by working with the action agency and the applicant to avoid adverse effects to listed species or their designated critical habitat. Throughout the Section 7 process, the Service works with federal partners and their applicants to develop alternatives or project modifications, where necessary, that accomplishes the purpose of the action while avoiding adverse effects. During consultation with federal agencies it is essential to coordinate and work closely with affected states and tribes, sharing information and seeking solutions to common problems. Although early coordination increases our workload at the beginning of a consultation, it is the key to avoiding costly delays during the consultation process and minimizing the potential for conflicts later.

There are times, however, that an action, as proposed, simply cannot be implemented without adversely affecting a listed species or its designated critical habitat. Formal consultation is required in these cases. During formal consultation, the Service, the action agency, and the applicant work closely to identify and minimize the effects of the project to listed species and their habitats. The Service then develops a biological opinion that:

- States whether the proposed action is likely to jeopardize any listed species or destroy or adversely modify any designated critical habitat;
- Describes any reasonable and prudent alternatives to the project that avoid jeopardizing a species or adversely modifying critical habitat, if a jeopardy or adverse modification finding is made; and,
- Describes and authorizes any incidental take anticipated from the proposed action.

The Service also provides terms and conditions to minimize the impact of this incidental take upon the species. This important component of the Section 7 process allows federal actions to move forward even though they might result in the incidental taking of listed species. The biological opinion also includes conservation recommendations that the federal agency may choose to implement. Those conservation recommendations and other measures included in the project may have beneficial results for non-listed species as well, and may reduce the potential that those species may eventually require listing.

The Service's section 7 workload (requests for consultation) has increased in recent years despite an apparent decline, from FY 2002 to 2003, in the number of consultations completed that in part reflects the results of a variety of programmatic and streamlining approaches implemented. Our consultation workload has grown to where we reviewed more than 56,000 federal actions for Section 7 compliance in FY 2003. In contrast, in 1999 the Service was reviewing about 40,000 projects per year. The increase in demand to meet the federal agencies requests for consultations makes it essential that we identify techniques for streamlining section 7 review for individual projects. Programmatic consultations are another method for managing the increasing consultation workload. Effective and adaptive consultation practices and the availability of well-trained staff have been, and will continue to be, the primary factors in maintaining our remarkable rate of success.

Additionally, the Service works with action agencies during project implementation to monitor the effectiveness of conservation actions included in biological opinions. Information from monitoring allows modification, when necessary, of actions to ensure that effects of the action are what was anticipated in the biological opinion. Effective monitoring may also streamline future consultations and reduce future requirements for agencies and applicants.

2003 Program Performance Accomplishments

For FY 2003, the Service was appropriated \$47,460,000 for the Consultation and HCP Programs. Significant actions we achieved in FY 2003 include:

- Continue to work with all our federal customers to design projects that will not have adverse impacts on listed species. We conducted more than 56,000 consultations on Federal actions in FY 2003, including more than 2,000 formal consultations.
- Provided technical assistance to customers that resulted in the approval of 25 HCPs in 2003, and increased the number of acres covered by HCPs to over 38 million acres of land, and increased the number of listed and non-listed species covered by HCPs to 533. HCPs that were permitted in FY 2003 include City of Chula Vista (CA), Salt River Roosevelt Project (AZ), Long Point LLC (OH), Palmas del Mar (PR), Snowshoe Mountain Resort (WV), Denver Water Board (CO), and several small landowner projects in Texas.
- Worked with the USFS, BLM, National Park Service (NPS), Bureau of Indian Affairs (BIA), and the National Marine Fisheries Service (NMFS) to develop and propose counterpart regulations for completing section 7 consultations on hazardous fuels reduction projects under the National Fire Plan.
- Worked with EPA to develop an analytical framework for integrating the needs of threatened and endangered species into the pesticide registration process under the *Federal Insecticide, Fungicide, and Rodenticide Act* and develop proposed counterpart regulations for consulting on pesticide regulatory decisions.
- As part of a multi-year effort, continued development of protocols to assess the effects to listed species of establishing aquatic life criteria used by states and tribes to establish water quality standards.

- Consulted on a wide array of western water projects such as the interior Columbia River basin, middle Rio Grande River, Pecos River, San Juan River, San Francisco Bay-Delta, Platte River, and Colorado River.
- Worked with the Corps of Engineers to complete consultation on its Annual Operation Plan and reinitiated consultation for its ongoing operations of the Missouri River Master Manual.
- Continued to support development of approximately 20 regional HCPs under development in California, Nevada, Arizona, Texas, and Hawaii. These HCPs represent the continued high level of collaborative planning among local, state, and federal governments, and the private sector. In southern California alone, these HCPs, among others, will address the needs of more than 17 million people and nearly 100 federally listed species in four of the fastest growing counties in the nation.
- Worked with the Office of Surface Mining (OSM) to deliver two sessions of a training program to Service, OSM, and State employees regarding the integration of section 7 consultation with the *Surface Mining Control and Reclamation Act*.

2004 Planned Program Performance

The Service was appropriated \$47,146,000 for the Consultation and HCP programs for FY 2004. Projected accomplishments include:

- Provide technical assistance to customers that will result in the approval of about 30 HCPs in 2004, to increase the number of acres covered by HCPs to approximately 40 million acres, and to increase the number of listed and non-listed species covered by HCPs to more than 550. In addition, we project to be involved in the development of approximately 300 HCPs covering approximately 30 million acres.
- Continue to work with all our federal customers to design projects that will not have adverse impacts on listed species. Based on past years' consultations, we expect to conduct approximately 77,000 consultations, including approximately 1,300 formal consultations and 30 programmatic consultations.
- As part of a multi-year effort, complete formal consultations with EPA on approximately 10 aquatic life criteria used by states and tribes to establish water quality standards.
- Complete consultation with the U.S. Coast Guard on final mandatory measures to control non-native species carried in ballast water.
- Complete formal consultation with the BLM on roughly 75 resource management plans throughout the western states. These plans are undergoing revisions to reflect newly listed species or critical habitat designations as well as changing land use practices. Once revisions are completed, the plans will govern actions such as grazing, oil and gas extraction, recreational use, and natural resource conservation on millions of acres of public land.
- Propose counterpart regulations for completing consultations on EPA's pesticide regulatory actions under the *Federal Insecticide, Fungicide, and Rodenticide Act*.
- Finalize proposed counterpart regulations for completing consultations on hazardous fuels reduction projects carried out by Federal agencies under the National Fire Plan and develop the Alternative Consultation Agreements needed to allow implementation by the Bureau of Land Management, Bureau of Indian Affairs, and the Forest Service.

Justification of 2005 Program Changes

Subactivity		2005 Budget Request	Program Changes (+/-)
Consultation & Habitat Conservation and Planning	\$(000) FTE	45,450 500	-1,989 0

The FY 2005 budget request for Consultation & Habitat Conservation and Planning is \$45,450,000 and 500 FTE, a net program decrease of \$1,989,000 and 0 FTE from the 2004 enacted level. Additional funds for the Consultation program element are available through reimbursable agreements with the USFS and BLM; these funds must be used only for consulting on National Fire Plan projects. In FY 2004, the Service expects to be reimbursed for about \$1,500,000 by the BLM and about \$2,250,000 by the USFS; in FY 2005, these total are expected to remain stable.

Natural Communities Conservation Planning (-\$1,975,000)

Federal financial support for participation in the NCCP program has been an important component of the collaborative partnership among local, state, and federal governments and the private sector to address the conservation of listed species in southern California. This direct financial assistance began prior to section 6 funding being made available to provide similar financial assistance for planning efforts elsewhere in the country. Habitat conservation planning is now well underway in southern California and the section 6 HCP Planning Grants program is available to provide financial assistance.

The proposed decrease will eliminate the funding targeted for support of the local jurisdictions seeking to engage in Natural Communities Conservation Planning process in southern California. Absent this pass through funding, these local jurisdictions will be eligible to compete for section 6 HCP Planning Grant funds together with other applicants nationwide.

Federal Vehicle Fleet (-\$14,000)

According to recent Office of Management and Budget statistics, among civilian agencies Interior has the third largest motor vehicle fleet. Vehicles are used by Interior employees and authorized volunteers to support multiple mission activities, many in remote areas. In some locations, government vehicles are provided to support service contractors. Over 4,000 vehicles are used seasonally (i.e., only in winter or summer), or for special purposes, such as law enforcement or fire fighting. Nearly 90 percent of the fleet vehicles are trucks, vans, buses and ambulances, and 10 percent are sedans and station wagons.

In 2004, the Department and the bureaus began a collaborative effort to improve the management of vehicle fleets including examination of the infrastructure for fleet management within each bureau, the identification of best practices that could be used Department-wide, and the development of action plans to improve fleet management and realize cost savings.

In anticipation of improved fleet management and the resultant savings, the 2005 budget proposes a reduction in funding. To achieve these savings, the bureau will undertake fleet reductions and cost-savings by: (1) reducing the size of the fleet; (2) employ energy saving practices by fleet operators; (3) acquire more efficient vehicles; (4) acquire the minimum sized vehicle to accomplish the mission; (5) dispose of underutilized vehicles; (6) freeze the acquisition of vehicles from the General Services Administration (GSA) Excess Vehicle program; and (7) explore and develop the use of inter-bureau motor pools.