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MANUAL TRANSMITTAL SHEET

Release
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Subject

6840 - Special Status Species Management

1. Explanation of Material Transmitted: This release revises BLM Manual 6840.

2. Reports Required: None

3. Materials Superseded: Manual pages superseded by this release are listed under "REMOVE" below. No other directives are superseded.

4. Filing Instructions: File as directed below.

REMOVE	INSERT
All of 6840 (Rels. 1-116)	6840
(Total 13 Sheets)	(Total 26 Sheets)

Assistant Director, Renewable Resources & Planning

6840 - SPECIAL STATUS SPECIES MANAGEMENT

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6840 - SPECIAL STATUS SPECIES MANAGEMENT

.01 Purpose. The purpose of this Manual Section is to provide policy and guidance, consistent with appropriate laws, for the conservation of special status species of plants and animals, and the ecosystems upon which they depend. These are species which are proposed for listing, officially listed as threatened or endangered, or are candidates for listing as threatened or endangered under the provisions of the Endangered Species Act (ESA); those listed by a State in a category such as threatened or endangered implying potential endangerment or extinction; and those designated by each State Director as sensitive. Conservation in this section and pursuant to the ESA means the use of all methods and procedures which are necessary to improve the status of federally listed species and their habitats to a point where the provisions of the ESA are no longer necessary. Conservation of special status species means the use of all methods and procedures which are necessary to improve the condition of special status species and their habitats to a point where their special status recognition is no longer warranted.

.02 Objectives. The objectives of the special status species policy are:

A. To conserve listed species and the ecosystems on which they depend.

B. To ensure that actions requiring authorization or approval by the Bureau of Land Management (BLM or Bureau) are consistent with the conservation needs of special status species and do not contribute to the need to list any special status species, either under provisions of the ESA or other provisions of this policy.

.03 Authority.

A. Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended.

B. Sikes Act, Title II (16 U.S.C. 670g *et seq.*) , as amended.

C. The Federal Land Policy and Management Act of 1976 (43 U.S.C.1701 *et seq.*), as amended.

D. Departmental Manual 235.1.1.A., General Program Delegation, Director, Bureau of Land Management.

E. Departmental Manual 632.1.1-1.6, Endangered Species Management.

F. Secretarial Order 3206 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endanger Species Act).

.04 Responsibility.

A. Director is responsible for the overall conservation of special status species, oversees implementation of the ESA on public lands, may designate BLM sensitive species, and

makes any applications for project exemptions under Section 7 of the ESA to the Secretary of the Interior.

B. Assistant Director for Renewable Resources and Planning is responsible for the timely development, approval, and implementation of policy and procedures for carrying out the special status species conservation program.

C. Fish, Wildlife and Forests Group Manager is responsible for initiating and recommending policies, objectives, general procedures, and priorities relating to the conservation of special status species and overall coordination of the special status species program at the national level.

D. Threatened and Endangered Species Senior Specialist is responsible for:

1. Maintaining appropriate interactions with BLM Offices and Groups, headquarters of other Federal agencies and bureaus, national conservation organizations, international conservation groups and individual authorities.

2. Maintaining a thorough knowledge of the legislation, regulations, court rulings, and litigation actions relative to special status species and understanding how these may affect BLM programs. This includes ensuring, through directives and training, that all field offices are notified of any changes in a species' status or agency policy on special status species.

3. Reviewing and recommending necessary changes to objectives and policies for the special status species program.

4. Providing centralized review and analysis of present and future needs related to research, management, and information transfer for special status species.

5. Developing and recommending budget documents, including budget justifications and the Annual Work Plan.

E. State Directors are responsible for:

1. Developing and implementing programs for the conservation of special status species within their states.

2. Coordinating the special status species program with adjoining BLM State Offices, State and other Federal agencies, various private organizations, and BLM constituents.

3. Establishing programs to determine which special status species occur on public land, the condition of the populations and their habitats, and how discretionary BLM actions affect those species and their habitats.

4. Designating BLM sensitive species, and periodically reviewing and updating the BLM sensitive species list, as appropriate, in coordination with State agencies that are responsible for fisheries, wildlife, and botanical resources and State Natural Heritage programs.

5. Ensuring that provisions for the conservation of special status species, particularly the objectives from approved recovery plans and conservation agreements, are incorporated in land use plans and subsequent activity and interdisciplinary level plans.

6. Ensuring that all actions comply with the ESA, its implementing regulations, and other directives associated with conserving special status species.

7. Ensuring appropriate consultations with the U. S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS).

8. Designating a special status species program coordinator whose responsibilities are:
   a. To maintain a cooperative working relationship with State and Federal agencies and local conservation groups, especially the regional and local offices of the FWS and NMFS.

   b. To recommend policy and guidance changes when necessary to maintain consistency with national level direction and to ensure compliance with the ESA and State laws protecting special status species.

   c. To recommend and develop training material to keep field offices current on policies and direction changes.

   d. To monitor implementation of the special status species program and recommend changes to ensure compliance with law, regulation, and policy and maintain effectiveness of the program.

F. Field Office Managers are responsible for implementing the special status species program within their area of jurisdiction by:

1. Conducting and maintaining current inventories for special status species on public lands.

2. Providing for the conservation of special status species in the preparation and implementation of recovery plans with which BLM has concurred, interagency plans and conservation agreements.

3. Ensuring that all actions comply with the ESA, its implementing regulations, and other directives associated with conserving special status species.

4. Coordinating field office activities with Federal, State, and local groups to ensure the most effective program for special status species conservation.

5. Ensuring actions are evaluated to determine if special status species objectives are being met.

6. Ensuring all actions authorized, funded or carried out by BLM follow the interagency consultation procedures as outlined in 50 CFR Part 402- Interagency cooperation - Endangered Species Act of 1973, as amended.

7. Ensuring results of formal section 7 consultations, including terms and conditions in incidental take statements, are implemented.

.05 References.

A 50 CFR Part 17 - Endangered and Threatened Wildlife and Plants.

B. 50 CFR Part 17 Subpart H - Experimental Population.

C. 50 CFR Part 226 - Designated Critical Habitat.

D. 50 CFR Part 402- Interagency Coordination –Endangered Species Act of 1973, as amended.

E. 50 CFR Part 424 - Listing Endanger and Threatened Species and Designating Critical Habitat.

F. 50 CFR Part 451 - Application Procedure.

G. 43 CFR 4180 - Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration.

J. Memorandum of Understanding (MOU) entered into with the U. S. Dept. of Agriculture Forest Service, U. S. Dept. of Defense, U. S. Dept. of the Army Corps of Engineers, U.S. Dept. of Commerce National Marine Fisheries Serv., U. S. Dept. of the Interior Fish and Wildlife Serv., Bureau of Land Management, Bureau of Reclamation, Minerals Management Service, National Park Service, Bureau of Mines, U. S. Dept. of Transportation Coast Guard, Federal Aviation Administration, Federal Highway Administration, and U. S. Environmental Protection Agency on Implementation of the Endangered Species Act, September 29, 1994.

K. Memorandum of Understanding (MOU) (94-SMU-058) - U. S. Dept. of Agriculture and the U. S. Dept. of the Interior Fish and Wildlife Service, Bureau of Land Management,

National Park Service, U.S. Dept. of Commerce National Marine Fisheries Service on candidate species conservation, January 25, 1994.

L. Memorandum of Agreement ESA Section7 Programmatic Consultations and Coordination among Bureau of Land Management, Forest Service, National Marine Fisheries Service, and Fish and Wildlife Service dated August 30, 2000.

M. BLM Manual Section1601 - Land Use Planning.

N. BLM Handbook H-1601 - Land Use Planning Handbook.

O. BLM Handbook H-1790-1- NEPA Handbook.

P. BLM Handbook H-8160-1 - General Procedural Guidance for Native American Consultation.

Q. BLM Handbook H-8560-1 - Management of Designated Wilderness Areas.

R. BLM Handbook H-8550-1 - Interim Management Policy and Guidelines for Lands Under Wilderness Review.

S. BLM Manual 1745 - Introduction, Transplant, Augmentation, and Reestablishment of Fish, Wildlife, and Plants.

.06 Policy. The policy of the BLM is described below.

A. Federally Listed Threatened and Endangered Species and Designated Critical Habitats.

1. The BLM shall conserve listed species and the ecosystems upon which they depend and shall use existing authority in furtherance of the purposes of the ESA. Specifically the BLM shall:

a. Determine, to the extent practicable, the occurrence, distribution, population dynamics and habitat condition of all listed species on lands administered by BLM, and evaluate the significance of lands administered by BLM in the conservation of those species.

b. Ensure management plans and programs provide for the conservation of designated critical habitat on lands administered by the BLM.

c. Develop and implement management plans and programs that will conserve listed species and their habitats.

d. Monitor and evaluate ongoing management activities to ensure conservation objectives for listed species are being met.

e. Ensure that all activities affecting the populations and habitats of listed species are designed to be consistent with recovery needs and objectives.

f. Implement mandatory terms and conditions and reasonable and prudent alternatives as outlined in final biological opinions.

g. Implement conservation recommendations included in biological opinions if they are consistent with BLM land use planning and policy and they are technologically and economically feasible.

2. Ensure that all actions authorized, funded, or carried out by the BLM are in compliance with the ESA. To accomplish this, the BLM shall:

a. Evaluate all proposed actions to determine if individuals or populations of listed species or their habitat, including designated critical habitat, may be affected.

b. Initiate consultation with the FWS and/or NMFS, including preparation of biological assessments, as appropriate, for those actions that may affect listed species or their habitats.

c. Until the consultation proceedings are completed and a final biological opinion has been issued, BLM shall not carry out any action that would cause an irreversible or irretrievable commitment of resources such that it would foreclose the formulation or implementation of any reasonable and prudent alternative measure that might avoid jeopardy to listed species and/or prevent the adverse modification of critical habitat.

d. Ensure that BLM actions will not reduce the likelihood of survival and recovery of any listed species or destroy or adversely modify their designated critical habitat.

3. Cooperate with the FWS and NMFS in planning and providing for the recovery of listed species. To accomplish this, the BLM shall:

a. As appropriate, participate on recovery teams and in recovery plan preparation, in addition to participating on State or regional working teams responsible for listed species recovery.

b. Review technical and agency drafts of recovery plans for species affected by BLM management to ensure that proposed actions assigned to BLM are technically and administratively feasible and consistent with BLM's mission and authority.

c. Cooperate with FWS and NMFS and non-Federal entities, as appropriate, in preparation of Habitat Conservation Plans.

d. Ensure that decisions, standards and guidelines, and best management practices in resource management plans and site-specific plans prepared for lands covered by previously approved recovery plans are consistent with meeting recovery plan objectives and terms and conditions of applicable biological opinions.

4. Retain in Federal ownership all habitat essential for the survival and recovery of any listed species, including habitat that was used historically, that has retained its potential to sustain listed species, and is deemed to be essential to their survival.

B. Federally Proposed Species and Proposed Critical Habitats. The BLM shall manage species proposed for listing as threatened or endangered and proposed critical habitat with the same level of protection provided for listed species and designated critical habitat except that formal consultations are not required. Specifically, the BLM shall:

1. Confer with the FWS and/or NMFS on any action that is likely to adversely affect a proposed species or proposed critical habitat.

2. Until the conference proceedings are completed, BLM shall not carry out any action that would cause an irreversible or irretrievable commitment of resources such that it would foreclose the formulation or implementation of a reasonable and prudent alternative that might avoid jeopardy to the proposed species and/or prevent the adverse modification of proposed critical habitat.

C. Candidate Species. Consistent with existing laws, the BLM shall implement management plans that conserve candidate species and their habitats and shall ensure that actions authorized, funded, or carried out by the BLM do not contribute to the need for the species to become listed. Specifically, BLM shall:

1. In coordination with FWS and/or NMFS determine, to the extent practicable, the distribution, population dynamics, current threats, abundance, and habitat needs for candidate species occurring on lands administered by the BLM; evaluate the significance of lands administered by the BLM or actions undertaken by the BLM in maintaining and restoring those species.

2. For candidate species where lands administered by the BLM or BLM authorized actions have a significant effect on their status, manage the habitat to conserve the species by:

a. Ensuring candidate species are appropriately considered in land use plans (BLM 1610 Planning Manual and Handbook, Appendix C).

b. Developing, cooperating with, and implementing range-wide or site-specific management plans, conservation strategies, and assessments for candidate species that include specific habitat and population management objectives designed for conservation, as well as management strategies necessary to meet those objectives.

c. Ensuring that BLM activities affecting the habitat of candidate species are carried out in a manner that is consistent with the objectives for managing those species.

d. Monitoring populations and habitats of candidate species to determine whether management objectives are being met.

3. Request technical assistance from the FWS and/or NMFS, and other qualified sources, on any planned action that may contribute to the need to list a candidate species as threatened or endangered.

D. State Listed Species. The BLM shall carry out management for the conservation of State listed plants and animals. State laws protecting these species apply to all BLM programs and actions to the extent that they are consistent with the Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.) and other Federal laws. In states where the State government has or proposes species in categories such as State threatened or endangered, implying potential endangerment or extinction, State Directors will develop policies that will assist States in achieving their management objectives for those species.

E. Sensitive Species. State Directors, generally in cooperation with State agencies that are responsible for fisheries, wildlife and botanical resources and State Natural Heritage programs, shall designate BLM sensitive species. The Director in some cases, may designate BLM sensitive species. The protection provided by the policy for candidate species shall be used as the minimum level of protection for BLM sensitive species. The State Director shall establish the process for developing, reviewing, maintaining and coordinating with other agencies, organizations, and States to ensure the accuracy and completeness of the state's BLM sensitive species list. The sensitive species designation is normally used for species that occur on Bureau administered lands for which BLM has the capability to significantly affect the conservation status of the species through management. The State Director may designate additional categories of special status species as appropriate and applicable to his or her state's needs. The sensitive species designation, for species other than federally listed, proposed, or candidate species, may include such native species as those that:

1. could become endangered in or extirpated from a state, or within a significant portion of its distribution in the foreseeable future,

2. are under status review by FWS and/or NMFS,

3. are undergoing significant current or predicted downward trends in habitat capability that would reduce a species' existing distribution,

4. are undergoing significant current or predicted downward trends in population or density such that federally listed, proposed, candidate, or State listed status may become necessary,

5. have typically small and widely dispersed populations,

6. are inhabiting ecological refugia, specialized or unique habitats, or

7. are State listed but which may be better conserved through application of BLM sensitive species status. Such species should be managed to the level of protection required by State laws or under the BLM policy for candidate species, whichever would provide better opportunity for its conservation.

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.1 The Endangered Species Act. On December 28, 1973, the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) became law and superseded earlier endangered species legislation, passed in 1966 and 1969, which focused on animals and which provided only limited protection to listed species. The Endangered Species Act of 1973 was the first Federal legislation to include a comprehensive effort to conserve plants and wildlife. The provisions of the ESA, as amended, apply to plants and animals that have been listed as endangered or threatened, those proposed for being listed, and designated and proposed critical habitat. The responsibility for carrying out the ESA was assigned to the Federal Government (50 CFR Part 402).

.11 Requirements under the ESA. BLM requirements for management of federally listed and proposed species come from the ESA. There are a total of 18 sections within the ESA, 9 of which contain requirements or authorizations for the BLM. Listed below are those sections which pertain to BLM with a summary of the BLM's requirements or authorizations under each.

A. Section 2 (Policy on conservation of listed species). BLM shall seek to conserve listed species and shall utilize its authorities in furtherance of the purposes of the ESA. In addition, BLM shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species.

B. Section 4 (Determination of endangered species and threatened species and development of recovery plans). While predominately a requirement of FWS and/or NMFS, BLM should provide relevant information to FWS and/or NMFS on species or habitats proposed for listing and may petition to add a species to, or to remove a species from, the threatened or endangered species list. In addition, BLM should provide information to the FWS and/or NMFS on proposed critical habitat for lands the Bureau administers and cooperate, as appropriate, with FWS/NMFS in developing recovery plans for listed species that occur on Bureau administered lands.

C. Section 5 (Land Acquisition). Authorizes the Secretary to use Land and Water Conservation funds to acquire lands to conserve fish, wildlife, and plants, including those which are listed as endangered species or threatened species.

D. Section 6 (Cooperation with the States). Authorizes the Secretary to cooperate to the maximum extent practicable with States including entering into management agreements and cooperative agreements for the conservation of threatened and endangered species.

E. Section 7 (Interagency Cooperation). Outlines requirements and procedures for interagency cooperation to conserve listed species and designated critical habitats. This section:

1. Requires BLM, in consultation with the FWS and/or NMFS, to use its authorities to further the purposes of the act by carrying out conservation programs for listed species.

2. Requires BLM, in consultation with the FWS and/or NMFS, to ensure that any action it authorizes, funds or carries out is not likely to jeopardize the continued existence of any listed species, using the best scientific and commercial data available.

3. Requires BLM to confer with the FWS and/or NMFS on any action that is likely to jeopardize proposed species or result in the destruction or adverse modification of proposed critical habitat.

4. Requires BLM to prepare a biological assessment if listed species or critical habitat may be present in the area affected by any major construction activity.

5. Prohibits BLM and applicants from making any irreversible or irretrievable commitment of resources with respect to the agency action which would foreclose the formulation and implementation of any reasonable and prudent alternatives that might avoid jeopardy to listed species or prevent the adverse modification of critical habitat.

6. Requires BLM to request early consultation on any action at the request of, and in cooperation with, the prospective permit or license applicant if the applicant has reason to believe that a listed species may be present in the area affected by the project and that implementation of such action will likely affect such species.

7. Sets procedures for BLM or a permit or license applicant to apply for an ESA exemption.

F. Section 9 (Prohibited Acts). This section identifies prohibited acts by any person subject to the jurisdiction of the United States, relating to species protected under the ESA. Except as authorized under Section 7(o) or Section 10(a) of the ESA, the prohibited acts include:

1. The BLM shall not take endangered species of fish or wildlife.

2. With respect to endangered plants, the BLM shall not remove or reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any such area; or remove, cut, dig up, or damage or destroy any such species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a state criminal trespass law.

3. The BLM shall not violate any regulation established under Section 4 of the ESA pertaining to threatened fish and wildlife or plants.

G. Section 10 (Exceptions to Prohibited Acts). This section identifies means by which exceptions to Section 9 of the ESA can occur for activities that include scientific purposes, establishment of experimental populations, or take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. The BLM shall acquire appropriate permits or authorizations to comply with the ESA and implementing regulations if its actions would result in a prohibited act.

H. Section 11 (Penalties and Enforcement). Within its authority, BLM may modify, suspend or revoke the lease, license, permit or other agreement authorizing the use of BLM managed lands, of any person who is convicted of a criminal violation of the ESA or any regulation, permit, or certificate issued pursuant to the ESA.

I. Section 18 (Annual Cost Analysis by the Fish and Wildlife Service). As requested by the FWS, the BLM should provide a summary of its expenditures for the conservation of listed species.

.12 BLM Policy Requirements. Actions authorized by BLM shall further the conservation of federally listed and other special status species and shall not contribute to the need to list any special status species under provisions of the ESA, or designate additional sensitive species under provisions of this policy.

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.2 Administration. The BLM will conserve federally listed, proposed, candidate, sensitive, and State listed species by fulfilling the requirements of the ESA and by using other authorized methods to ensure that the actions authorized by BLM are consistent with the conservation of such species and that they do not contribute to the need to list any special status species under provisions of the ESA, or designate additional sensitive species under provisions of this policy.

.21 Administration of the ESA. The BLM will conserve listed species, designated critical habitat, proposed species, and proposed critical habitat through administration of the various sections of the ESA that apply to Federal agencies.

A. Section 2 (Findings, purposes and policy). The policy of the ESA, as stated in Section 2, is that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act. The BLM shall comply with all applicable sections of the ESA. In addition:

1. The BLM should continue its cooperative role in the Memorandum of Understanding (MOU) on the implementation of the ESA, entered into with the U. S. Forest Service, U. S. Department of Defense, U. S. Army Corps of Engineers, NMFS, FWS, Bureau of Reclamation, Minerals Management Service, National Park Service, U. S. Coast Guard, Federal Aviation Administration, Federal Highway Administration, and U. S. Environmental Protection Agency (Implementation of the Endangered Species Act, dated September 29, 1994). The purpose of the MOU was to establish a general framework for cooperation and participation among the cooperators in the exercise of their responsibilities under the ESA. To meet the purpose of the MOU and the requirements of Section 2 of the ESA, the BLM should:

a. Seek to improve efficiency by combining efforts with the other cooperators of the MOU to foster better working relationships and promote the conservation of listed species.

b. Use its authorities to further the purposes of the ESA by carrying out cooperative programs for the conservation of listed species .

c. Identify opportunities to conserve listed species and the ecosystems upon which those species depend within existing BLM programs or authorities.

d. Determine whether BLM planning processes effectively help conserve listed species and the ecosystems on which they depend.

e. Use existing programs, or establish a program if needed, to evaluate, recognize, and reward the performance and achievements of personnel who are responsible for planning or implementing programs to conserve or recover listed species or the ecosystems on which they depend.

f. Establish or participate in existing regional interagency working groups that identify geographic areas within which the groups will coordinate agency actions and create opportunities, and overcome barriers, to conserve listed species and the ecosystems upon which they depend and, to the extent practicable, protect candidate, or sensitive species and the ecosystems upon which they depend.

g. Participate in a national ESA working group to coordinate the implementation of the ESA.

2. As specifically addressed in Section 2 of the ESA, the BLM shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species. The BLM should:

a. Participate on watershed councils.

b. Provide technical assistance to State and local agencies on species, critical habitats, and resources.

B. Section 4 (Determination of endangered species and threatened species and development of recovery plans).

1. Determination of endangered or threatened status. Determination of endangered or threatened status of species by the FWS and/or NMFS is provided for in Section 4 of the Endangered Species Act and the procedures in 50 CFR Part 424. BLM should provide assistance to the FWS and/or NMFS for actions that affect public land, including as follows:

a. Responsibilities. BLM is responsible for preparing and maintaining, on a continuing basis, a current inventory of the public land and its resources (FLPMA, 43 USC 1701 Sec.201 (a)). This inventory information, along with monitoring data, shall be used to evaluate the current condition of plants and animals and their habitats on the public land to determine if their status under the ESA should be changed (listed or delisted).

b. Petitions. When conditions warrant, BLM State Directors may petition the FWS and/or NMFS to change the status of any species or revise critical

habitat. These petitions shall contain concise biological evidence to substantiate any proposed change.

(1) Among other things a petition to delist a species must demonstrate clearly that the recovery plan objectives have been met or that there is new evidence to show that the conditions on which the initial listing was based no longer exist. Petitions to delist should also include a statement on how BLM intends to manage the species to ensure that the provisions of the ESA will not be required in the future.

(2) Petitions to list or delist species must be based solely on substantial scientific information for the species and its habitat and must address the five factors for listing included in Section 4 of the ESA.

(3) All petitions shall be coordinated with the State agency having responsibility for the species involved. Information copies of all petitions will be forwarded to the Washington Office, Fish, Wildlife and Forests Group.

2. Recovery plans. Recovery plans are developed by the FWS and/or NMFS and establish recovery objectives for a species, provide a listing of tasks necessary to achieve those objectives, and recommend assignments to involved agencies to carry out these tasks. A primary function of recovery plans is to combine programs of all agencies involved in managing a species into a coordinated management effort. BLM may adopt recovery plans. If BLM does adopt a recovery plan, BLM should incorporate the objectives of the recovery plan into appropriate land use and activity plans.

a. Recovery Teams. The FWS and/or NMFS often request that BLM provide representatives to serve as members on recovery teams to assist in preparation of recovery plans for species where public land has a significant role in recovery. These requests usually include a suggestion for a particular employee with special qualifications.

(1) State Directors should make employees with special expertise available and to provide whatever support is necessary to help ensure timely completion of recovery plans.

(2) BLM employees should accept these nominations. The role of the team member is to be a technical expert and advisor, to provide biological input for the species and its habitat, and to inform the recovery team of BLM policies, programs, and procedures for the recovery team.

(3) BLM participation in recovery plan preparation does not indicate BLM approval of the plan.

b. Technical Review Drafts. BLM should review technical review drafts of recovery plans to ensure that the information is biologically correct and complete. This review and input does not represent agency concurrence.

c. Agency Review Drafts. All BLM offices that will be involved in implementation of a particular recovery plan should review draft plans. Field offices should complete the following analysis:

(1) Determine whether measurable objectives are stated clearly and that BLM can realistically meet its proposed share of the recovery efforts including personnel and financial obligations.

(2) Identify any conflicts with other laws, regulations, and policies governing BLM programs and activities.

(3) Identify constraints on other BLM programs, activities, or practices mentioned or implied in the plan.

(4) Evaluate the effects of planned actions carried out by other cooperators on BLM programs.

(5) Identify any modifications to other BLM plans, ongoing programs, or ongoing practices that need to be made to carry out the plan, including the need to amend resource management plans.

(6) Check accuracy of cost estimates for BLM tasks, and evaluate personnel and funding needs.

3. Delisted Species. The results of recovery plans and actions should ultimately be removal from the Federal threatened or endangered species list (delisting). Responsibilities of BLM when this occurs take two paths.

a. BLM shall assess and determine the new status of the delisted species. If the species is still State listed, then the provisions of policy regarding State listed species will apply (.06D). If the species is not State listed, BLM shall determine if it should become a BLM sensitive species (.06E).

b. A minimum 5-year monitoring commitment is required for delisted species under the ESA. BLM shall work with partners such as the FWS, NMFS, State agencies, and others to monitor delisted species.

C. Section 5 (Land Acquisition). The BLM shall consider and seek opportunity for the acquisition by purchase, donation, land exchange, conservation easement, or other means, land, water, or interests for the purpose of conserving listed species, designated critical habitat, proposed species, or proposed critical habitat.

D. Section 6 (Cooperation with States). Section 6 of the ESA requires cooperation between the FWS and/or NMFS and States for the purposes of conserving any listed species. The BLM should assist with this, as follows:

1. The BLM should provide technical assistance to, and coordinate with, State agencies responsible for the conservation of endangered and threatened species at the state level.

2. The BLM shall comply with State laws protecting listed species for all programs and actions to the extent that State laws are consistent with FLPMA and other Federal laws.

E. Section 7 (Interagency Cooperation). Section 7(a)(1) requires the BLM to utilize their authorities in furthering the purposes of the Act by implementing programs for the conservation of threatened and endangered species. To meet the requirements of Section 7(a)(1) the BLM will include a discussion of conservation programs for threatened and endangered species separate from any consultation requirements in the NEPA document for actions affecting listed species. The requirements of Section 7(a)(2) are to be carried out in consultation with and with the assistance of the Secretary of the Interior and the Secretary of Commerce. The procedures for carrying out this consultation are included in 50 CFR Part 402, Interagency Cooperation. The need to initiate a consultation is usually determined by the BLM and is based on an analysis to determine if a listed species or its habitat may be affected by a proposed action. If a listed species is known or suspected to occur on land that will be affected by an action, and BLM determines that individuals, populations, or designated critical habitat may be affected by the action, either positively or negatively; then BLM must initiate consultation. FWS and/or NMFS may request BLM to enter into consultation if they identify an action for which there has been no consultation that may affect a listed species or designated critical habitat.

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1. Types of Activities. Section 7 applies to all actions for which there is discretionary BLM involvement or control. All actions that are authorized, funded, or carried out by the BLM that may affect listed or proposed species or designated or proposed critical habitat are subject to the provisions of the ESA.

a. This includes all such actions, whether or not:

(1) the species or critical habitat occurs on BLM managed lands.

(2) the proposed action occurs, either wholly or in part, on BLM managed lands.

(3) the BLM itself carries out the proposed action.

(4) the proposed action benefits BLM resources.

b. If BLM approval or authorization is for the entire action, e.g. authorizing a right-of-way for a powerline installation across public land for a powerline route extending beyond public land, the BLM may request that the FWS and/or NMFS conduct consultation in incremental steps when by statute the BLM is allowed to take incremental steps toward completion of the action. The biological opinion will include the Service's views on the entire action (50 CFR Part 402.14(k)).

(1) The first consultation must be formal (see .21E5).

(2) The BLM may proceed with the incremental step provided that the FWS and/or NMFS finding for the incremental step is not a jeopardy opinion; the BLM continues consultation with respect to the entire action and obtains biological opinions, as required, for each incremental step; the BLM fulfills its obligation to obtain sufficient data upon which to base the final biological opinion on the entire action; the incremental step does not result in the irreversible or irretrievable commitment of resources; and there is reasonable likelihood that the entire action will not result in jeopardizing the continued existence of a listed species or destruction or adverse modification of designated critical habitat.

2. Environmental Baseline, Direct Effects, Indirect Effects, and Interrelated and Interdependent Actions and Effects. To decide if consultation under Section 7 is necessary, the BLM needs to determine if its action within an action area may affect a listed species or designated critical habitat or is likely to adversely affect a proposed species or proposed critical habitat. The effects can be negative, benign, or beneficial to the listed or proposed species and critical habitat. The BLM shall evaluate the direct and indirect effects and the effects of interrelated and interdependent actions on the listed or proposed species and designated or proposed critical habitat as compared to the environmental baseline. Cumulative effects are considered relative to the requirements of the ESA only during the formal consultation process and are discussed in Section .21.E.5.b. The baseline and effects are defined as:

a. Environmental Baseline. The environmental baseline is the condition of a species or critical habitat at a specified point in time. The baseline does not include effects of the action under review for consultation. It does include the tribal, State, local and private actions already affecting a species or critical habitat or those that will occur while the consultation is in progress. Federal actions, unrelated to the action under consultation, that have affected or are affecting the species or critical habitat and have a completed formal or early consultation, are also part of the baseline.

b. Direct Effects. Those effects caused by or that will result from the action and will occur in the same time and place.

c. Interrelated and Interdependent Actions and Effects. Interrelated actions are those actions that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration. The "but, for" test should be used to assess whether an action is interrelated or interdependent to the proposed action. If the activity would not occur but for the proposed action, then the activity is interrelated or interdependent and must be considered during consultation on the proposed action.

d. Indirect Effects. Those effects caused by or that will result from the action and are later in time or farther removed in distance, but are reasonably certain to occur.

3. Informal Consultation. Informal consultation is a process that includes all discussions and correspondence between the FWS and/or NMFS and the BLM or its designated non-Federal representative designed to assist the BLM in determining if formal consultation or a conference is required. The BLM shall not dismiss the effects of an action on individuals of a listed species or its habitat, even when the overall net effect may be beneficial, without consulting with the FWS and/or NMFS.

a. The BLM shall seek recommendations for modification of actions that will avoid the likelihood of adverse effects and contribute to achieving recovery and conservation objectives.

b. If the BLM determines that the proposed action may affect but is not likely to adversely affect listed species, designated critical habitat, proposed species or proposed critical habitat, the BLM has the opportunity to conclude Section 7 consultation. This includes proposed actions that may have beneficial, benign, discountable, or insignificant effects. Informal consultation does not conclude unless the BLM has written concurrence of its determination from the FWS and/or NMFS.

c. The BLM shall continue Section 7 consultation if the BLM determines that the proposed action may affect and is likely to adversely affect listed species, designated critical habitats, proposed species, or proposed critical habitats; if there are undetermined effects; or if BLM's determination of not likely to adversely affect is not based on a biological assessment or has no written concurrence from the FWS and/or NMFS.

(1) The BLM shall continue informal consultation and seek recommendations for modification of actions that will avoid the likelihood of adverse effects and contribute to achieving recovery and conservation objectives.

(2) If project modifications cannot be made such that the proposed action is not likely to adversely affect listed species, designated critical habitat, proposed species, or proposed critical habitat, or if there are undetermined effects, BLM shall initiate formal consultation for listed species or designated critical habitat or conference for proposed species or proposed critical habitat. This includes actions for which the overall effect may be beneficial to the listed species or designated critical habitat but is likely to cause adverse effects. This also includes all actions for which incidental take is anticipated to occur.

4. Conference on Proposed Species and Proposed Critical Habitat. Section 402.10 of 50 CFR provides the procedures necessary for compliance with Section 7(a)(4) of the ESA.

a. BLM shall confer with the FWS and/or NMFS on any action that is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat.

b. In order to meet policy objectives, BLM shall also confer on an action or project that may affect and is likely to adversely affect a proposed species or proposed critical habitat although this step is not required by the ESA or regulations.

c. For proposed species, the BLM should request formal conference in anticipation of future listing. Formal conference follows the procedures for formal consultation. The conference opinion issued at the conclusion of a formal conference may be adopted as the biological opinion once the species or critical habitat is listed or designated provided the project proposal has not changed and no new pertinent information exists. The FWS and/or NMFS usually provides advisory recommendations on ways to avoid or minimize adverse effects.

d. The BLM should consider the advisory recommendations for minimizing or avoiding adverse effects to proposed species or proposed critical habitat that are provided by the FWS and/or NMFS in the conference report from a non-formal conference or conference opinion from a formal conference. Implementation of recommendations is at the discretion of the BLM.

5. Formal Consultation. Formal consultation is required on all actions that may affect a listed species, its habitat, or any designated critical habitat (50 CFR Part 402.14), unless written concurrence that an action is not likely to adversely affect the species is received from FWS and/or NMFS. When it is determined by the BLM that a proposed action may affect and is likely to adversely affect a listed species or designated critical habitat, BLM shall initiate formal consultation. Formal consultation is conducted to determine if the proposed action, taken together with cumulative affects is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Formal consultation is initiated with submission of a biological assessment and a written request to initiate formal consultation.

a. Providing Information. During formal consultation, BLM shall provide the FWS and/or NMFS with the best scientific information available for an adequate review of the effects that a proposed action may have on a listed species or designated critical habitat. If information is lacking, the FWS and/or NMFS can request that the BLM conduct additional surveys to better address listed species issues. Although additional surveys or studies are not required by the ESA, they can be in BLM's best interest, as the FWS and/or NMFS are required to err on the side of conserving listed species when rendering a biological opinion based upon limited information.

(1) The BLM shall prepare a biological assessment, as described in 50 CFR 402.12 and 402.14, as the means of providing information to the FWS and/or NMFS.

(2) The BLM shall request in writing a list from the FWS and/or NMFS of listed species and designated critical habitat in the project area of a major construction activity, as defined in NEPA. In lieu of this, the BLM may determine these and request concurrence from the FWS and/or NMFS. If listed species or designated critical habitat are present in the project area, BLM shall prepare a biological assessment.

b. Cumulative Effects. In accordance with Section 7 regulations, the FWS and/or NMFS is required to consider cumulative effects in determining jeopardy or non-jeopardy to a species. The regulations require the BLM to provide an analysis of cumulative effects in its biological assessment. Cumulative effects, as defined for the purposes of the ESA, involve those effects from future non-Federal action (tribal, State, local, private and other entities) that are reasonably certain to occur in the action area under consideration. These future non-Federal actions are reasonably certain to occur if they have been approved by all control agencies and are economically viable. Past effects are considered as part of the environmental baseline and are not considered cumulative effects.

(1) The BLM may submit the appropriate cumulative effects analysis that is required for NEPA compliance. However, the ESA and NEPA requirements for cumulative effects analysis are different. For the ESA, future Federal actions unrelated to the proposed action are not considered part of cumulative effects because they will require a separate evaluation for consultation. The NEPA definition includes the incremental effects of the action plus the effects of other past, present, and reasonably foreseeable future actions regardless of the source, Federal or non-Federal. If the NEPA cumulative effects analysis is submitted, BLM should make the distinction between the ESA cumulative effects and NEPA cumulative effects.

c. Irreversible and Irretrievable Commitment of Resources. Once a request for formal consultation is made, BLM shall ensure that the agency and any of its applicants do not make any irreversible or irretrievable commitments of resources on public land with respect to the consulted action, that have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives that could avoid jeopardy to listed species or destruction or adverse modification of designated critical habitat. In coordination with the FWS and/or NMFS, BLM shall immediately evaluate any ongoing projects that are part of an ongoing consultation to determine if there will be any such irreversible or irretrievable commitments of resources. Any BLM discretionary actions with such irreversible or irretrievable commitments of resources shall be immediately suspended until consultation has concluded and it is determined that the subject project can comply with the biological opinion or be appropriately modified to eliminate adverse effects.

d. Reasonable and Prudent Alternatives. If the FWS and/or NMFS concludes that an action is likely to jeopardize the continued existence of a listed species or will result in the destruction or adverse modification of designated critical habitat, it will prepare a biological opinion that identifies the availability of any reasonable and prudent alternatives. Reasonable and prudent alternatives are those that can be implemented in a manner consistent with the intended purpose of the action, can be implemented consistent with the scope of the action agency's legal authority and jurisdiction, are economically and technologically feasible, and would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of designated critical habitat. The final biological opinion, if a jeopardy opinion, will include any available reasonable and prudent alternatives.

(1) The BLM should provide expertise to the FWS and/or NMFS in determining the availability and development of reasonable and prudent alternatives, although the FWS and/or NMFS retains the final decision on which alternatives are included in the biological opinion. The BLM should encourage applicant (see .21E5i and Glossary) participation in the development of reasonable and prudent alternatives.

(2) The BLM should request and review a copy of the draft biological opinion from the FWS and/or NMFS and provide comments if needed.

(A) The BLM should forward a copy of the draft biological opinion to any applicants and inform them that any comments they may have for the FWS and/or NMFS must go through the BLM, although they may provide copies to the FWS and/or NMFS directly.

(B) The BLM should forward applicant comments to the FWS and/or NMFS.

e. Termination of the Consultation Procedures. Formal consultation may terminate as follows:

(1) The FWS and/or NMFS issues a biological opinion.

(2) During any stage of consultation the BLM notifies the FWS and/or NMFS in writing that the proposed action is not likely to occur.

(3) During any stage of consultation the BLM determines, with the written concurrence of the FWS and/or NMFS, that the proposed action is not likely to adversely affect any listed species.

(4) The BLM notifies the FWS and/or NMFS in writing that it will accept one of the reasonable and prudent alternatives and accept other mandatory requirements.

f. BLM responsibility after issuance of the biological opinion. After the FWS and/or NMFS issues the biological opinion, the BLM determines how it will proceed.

(1) BLM shall notify FWS and/or NMFS in writing of its final decision on any proposed actions that receive a jeopardy or adverse modification of critical habitat determination in the biological opinion. If the BLM determines that it cannot comply with the requirements of Section 7(a)(2) (no jeopardy) of the ESA, it may apply for exemption.

(2) After acceptance of the biological opinion, BLM shall implement the proposed action or reasonable and prudent alternative as described and shall implement all mandatory terms and conditions. BLM shall review conservation recommendations in biological opinions and implement them if they are consistent with BLM land use planning and policy and they are technologically and economically feasible.

g. Reinitiation. The BLM in writing shall reinitiate consultation if one or more of the four conditions occur: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the action that may affect listed species or designated critical habitat in a manner or extent not previously considered; (3) the action is modified in a manner causing an effect to listed species or critical habitat not previously considered; (4) a new species is listed or critical habitat is designated which may be affected by the action. The State Director or Field Manager of the administrative unit that received the biological opinion shall determine if a reinitiation condition has occurred and shall reinitiate the consultation, if needed, with the appropriate FWS and/or NMFS office.

h. Plan Level Consultation. The Director, State Directors, and Field Managers shall initiate or reinitiate consultation on land use plans, other

forms of land management plans, or programmatic level plans when new listings or proposals of species and critical habitats occur.

i. Applicants. An applicant is defined as any person who requires formal approval or authorization; such as for permits, licenses, leases, or letters of authorization or approval, from the BLM as a prerequisite to conducting an action. The applicant is involved in the ESA conference or consultation process if the applicant's specific action that requires approval or authorization by the BLM may affect a federally threatened, endangered, or proposed species.

(1) BLM responsibilities relative to applicants in the context of early consultation are described in Section .21.E.5.k.

(2) If possible, the BLM shall identify and determine who is an applicant for the purposes of ESA consultation. Not all applicants will be identifiable by the BLM at the time of consultation. The BLM does not identify applicants in association with programmatic consultations, e.g. land use plan level consultation, because no specific action that may require authorization or approval is involved. Under programmatic consultations, the BLM usually retains the discretion to provide formal authorization or approval for more specific actions. If consultation for a more specific action is required, applicants for that specific action will be identified at that time.

(3) BLM shall promptly inform FWS and/or NMFS if there is an applicant identified for a project that has been or will be submitted for consultation.

(4) BLM shall notify known applicants promptly if the conference or consultation process is required and of their opportunities for participation in the process.

(A) The BLM shall provide any applicant the opportunity to submit information for consideration during the consultation process should provide the same opportunity during the conference process.

(B) If a required biological assessment will not be completed within the 180 day time period, after receipt of or concurrence with the species list, the BLM shall provide the applicant with a written statement setting forth the estimated length of the proposed extension and the reasons why such an extension is necessary.

(C) If requested by the applicant, the BLM should request a copy of the draft biological opinion from the FWS and/or NMFS, provide a copy to the applicant, and forward any applicant comments to the FWS and/or NMFS.

(D) The BLM should encourage the FWS and/or NMFS to discuss the basis for the biological determination in the biological opinion to enhance the applicant's understanding of the outcome. BLM will also involve the applicant in discussions with FWS and/or NMFS to develop reasonable and prudent alternatives to the proposed action in instances where a proposed action is determined to be likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat.

j. Designation of non-Federal Representative. The BLM may designate a non-Federal representative to conduct informal consultation or prepare a biological assessment under 50 CFR Part 402.08. However, the ultimate responsibility for compliance with Section 7 of the ESA remains with the BLM.

(1) The BLM shall provide written notice to the FWS and/or NMFS if it designates a non-Federal representative.

(2) An applicant may be the designated non-Federal representative. If an applicant is involved and is not the designated non-Federal representative, then the applicant and BLM must agree on the choice of the designated non-Federal representative.

(3) The BLM shall furnish guidance and supervision and shall independently review and evaluate the scope and contents of the biological assessment prepared by the designated non-Federal representative.

k. Early Consultation. Section 7(a)(3) of the ESA and Secretarial exercise of authority in regulations provides the means, referred to as "early consultation," for a prospective applicant for public land use to request an early consultation if the prospective applicant has reason to believe that the prospective action may affect listed species or designated critical habitat (50 CFR Part 402.11). For early consultation, BLM shall:

(1) Receive in writing the prospective applicant's certification that it has a definitive proposal outlining the action and its effects and it intends to implement its proposal, if authorized.

(2) Upon receipt of the prospective applicant's certification, initiate early consultation in writing with the FWS and/or NMFS and provide all of the information required under initiation of formal consultation (50 CFR Part 402.14.(c)).

(3) For a major construction activity, include a biological assessment at the time of initiating early consultation.

(4) Provide any prospective applicant with the opportunity to submit information for consideration during early consultation.

(5) If the prospective applicant requests through the BLM a copy of the draft preliminary biological opinion, forward the request and the prospective applicant's comments on the draft preliminary biological opinion to the FWS and/or NMFS.

(6) Not consider the incidental take statement of the preliminary biological opinion as authority to take listed species.

(7) Request in writing to FWS and/or NMFS confirmation of the preliminary biological opinion as the final biological opinion if the BLM feels that there have been no significant changes in the action as planned or in the information used during the early consultation. If confirmation from FWS and/or NMFS is not received, initiate formal consultation.

6. Exemption. The ESA allows opportunity to apply for an exemption from the requirements of section 7(a)(2).

a. The Director has sole authority to make an exemption application if the BLM is the exemption applicant.

b. The application for an exemption shall be submitted to the Secretary of the Interior or Secretary of Commerce, as appropriate, within 90 days following the termination of the consultation process.

c. Procedures for applications for exemption are in 50 CFR Part 451.

7. Consultation and Conference Approaches. A number of approaches to improve the efficiency and effectiveness of Section 7 consultation and conference have been utilized in various areas of the BLM. The overall goal is to enhance compliance with obligations under Section 7(a)(1) and 7(a)(2). The Director, State Directors and Field Managers, in cooperation with other Federal agencies, should develop and utilize techniques to further the consultation and conference process, such as the Interagency Memorandum of Agreement ESA Section7 Programmatic Consultations and Coordination among BLM, FS, NMFS, and FWS dated August 30, 2000. Examples of these approaches are:

a. Completing and using national, ecosystem or regional level consultations and conferences that address broad scale programs or wide ranging species or critical habitats. The BLM should tier to and utilize the information, analysis, and determinations of effects of these consultations and conferences to the greatest extent practicable when consulting or conferring at more local or project-specific levels.

b. Consulting and conferring jointly with other Federal agencies on programs or actions affecting the same species or critical habitats in the same project or geographic area.

c. Completing combined consultations and conferences with FWS and NMFS together when programs or actions include effects on species or critical habitats under both agencies' jurisdictions (e.g., an action affects both listed plants and anadromous fish).

d. When programmatic consultation results in biological opinions that provide conservation recommendations or design criteria for future agency proposals, considering these recommendations or design criteria in the development of future proposals. If these future proposals are designed to be consistent with these recommendations or criteria, consultation will be facilitated and compliance with Sections 7(a)(1) and 7(a)(2) furthered.

e. Completing batched consultations or conferences on logical groupings of program or activity types. This can be done on a quarterly, annual or longer time frame.

f. Using streamlined processes. For example, in the Pacific Northwest, the FWS, NMFS, BLM and FS utilize joint procedures termed "streamlined consultation." This focuses on early involvement of FWS and/or NMFS in program or action design; interagency teams that complete consultation or conference; ensuring program or action are consistent with existing plans' standards, conference reports, conference opinions, and biological opinions; and submitting complete, "agreed-to" biological assessments. Consultations and conferences average completion times of less that 60 days for formal consultation or conferences and 30 days for informal consultation.

F. Section 9 (Prohibited Acts). The BLM shall not allow actions that result in take of listed animals, remove or reduce to possession endangered plants, or violate any regulations pertaining to threatened plants, except as provided for under Section 7(o) or Section 10(a) of the ESA.

1. Plants. Section 9 of the ESA prohibits take of all individuals of listed fish or wildlife. For plants, there is no "take" prohibition, but Section 9 makes it unlawful for anyone to remove and reduce to possession any endangered plant species; maliciously damage or destroy any endangered plant species on Federal lands; remove, cut, dig up, or damage or destroy any such species from any other area in knowing violation of any law or regulation of any state or in the course of any violation of a state criminal trespass law; or violate any regulations pertaining to threatened plants.

G. Section 10 (Exceptions to the ESA). Section 10 of the ESA provides for exceptions to the requirements and prohibited acts of other sections of the ESA.

1. Take and incidental take. Section 10 of the ESA provides exceptions for activities otherwise prohibited by Section 9. The BLM shall obtain permits from the FWS and/or NMFS if take of listed fish or wildlife species or the removal or reduction to possession of listed plants is anticipated and is not otherwise authorized. Authorization for take can occur in several ways.

a. If Section 7 consultation has occurred, for federally threatened and endangered fish and wildlife, the final biological opinions normally include an incidental take statement, with which the BLM shall comply. This statement will specify the impact, i.e. the amount or extent, of such incidental take; specify those reasonable and prudent measures that FWS and/or NMFS

considers necessary or appropriate to minimize such impact; set forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the BLM or any applicant; specify procedures to be used to handle or dispose of any individuals of a species actually taken, and monitor and report the impact on the species to FWS and/or NMFS.

(1) Biological opinions for plants do not contain an incidental take statement, only conservation recommendations. To the extent practicable, the BLM should implement such recommendations.

b. If an incidental take statement from a biological opinion is not applicable for an action, the BLM shall obtain a Section 10 permit from the FWS and/or NMFS for take of listed fish or wildlife or removal or reduction to possession of listed plants under 50 CFR Part 17 prior to conducting activities for scientific purposes, including scientific studies for biological assessments prior to Section 7 consultation.

(1) For federally threatened fish and wildlife species that have special rules identified in 50 CFR Parts 17 Subpart B, the BLM shall follow the special rules in lieu of obtaining a Section 10 permit.

(2) A conservation plan (usually a Habitat Conservation Plan) is required for a Section 10 permit.

c. For potential take of any experimental fish or wildlife species or removal or reduction to possession of any experimental plant outside of those allowed under biological opinions, the BLM shall follow permit requirements in special rules identified in 50 CFR Part 17 Subpart B.

d. A conservation agreement does not authorize take.

e. An incidental take statement provided with a conference opinion does not become effective unless the FWS and/or NMFS adopts the conference opinion as the final biological opinion once the listing is final.

f. With early consultation, the incidental take statement provided with a preliminary biological opinion does not constitute a statement of anticipated take under Section 10 of the ESA unless it is confirmed by the FWS and/or NMFS as the final biological opinion.

g. For fish and wildlife, the exceptions to the requirement of permission for take are as follows and shall be reported to the FWS and/or NMFS as described in 50 CFR Part 17.21(4):

(1) Any BLM employee may take endangered wildlife in defense of his or her own life or the lives of others.

(2) Any BLM employee may, when acting in the course of his or her official duties, take endangered wildlife without a permit if such action is necessary to: (i) aid a sick, injured or orphaned specimen; or (ii) dispose of a dead specimen; or (iii) salvage a dead specimen which may be useful for scientific study; or (iv) remove specimens which constitute a demonstrable but non-immediate threat to human safety, provided that the taking is done in a humane manner; the taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live-capturing and releasing the specimen unharmed, in a remote area.

(3) Any BLM employee may, when acting in the course of his or her official duties, remove and reduce to possession a federally endangered plant without a permit if such action is necessary to (i) care for a damaged or diseased specimen; (ii) dispose of a dead specimen; or (iii) salvage a dead specimen which may be useful for scientific study.

2. Experimental Populations.

a. General. FWS and/or NMFS can designate experimental populations of listed plants and animals. These populations can only be released outside the species current natural range but within its probable historic range if the Secretary determines that such release will further the conservation of the species (with rare exceptions). The intent is to ensure separation between experimental and natural populations. The Secretary of Interior or Commerce must determine whether the experimental population is:

(1) "Essential" - Essential to the continued existence of a listed species in the wild.

(2) "Nonessential" - Not essential to the continued existence of a listed species.

b. Management. BLM shall treat essential experimental populations as threatened species, and nonessential experimental populations as proposed species for purposes of Section 7 (other than subsection 7(a)(1)). For nonessential experimental populations, this means:

(1) Incidental take can occur without specific authorization by FWS and/or NMFS.

(2) Conferencing (as opposed to consultation) is required.

(3) As required by Section 7(a)(1), the BLM shall use its authorities to conserve these populations.

c. Planning. Planning efforts must reflect those actions necessary for recovery of species to the extent BLM management can influence recovery. State Directors and field managers will:

(1) Keep informed on recovery plan development so needs can be addressed during planning.

(2) Ensure participation with FWS and/or NMFS in developing recovery needs for species that may have experimental population designation.

d. Wilderness. In some cases, it is appropriate to transplant and reintroduce listed species into their historic ranges within designated wilderness and wilderness study areas. BLM shall use only the minimum actions necessary and the methods most appropriate for wilderness areas. Further information on guidelines for fish and wildlife is contained in BLM Handbook H-8560-1 for wilderness areas, in H-8550-1 for wilderness study areas, and in MS 1745 for Introductions and Transplants.

H. Section 11 (Penalties and Enforcement). The BLM shall exercise all of its authorities to ensure compliance with the ESA. The BLM may modify, suspend or revoke the lease, license, permit or other agreement of a person who is convicted of a criminal violation of the ESA or any regulation, permit, or certificate issued pursuant to the ESA.

I. Section 18 (Annual Cost Analysis by the Fish and Wildlife Service). The BLM shall provide to FWS a summary of its expenditures on the conservation of listed species for FWS annual expenditure report to Congress.

J. Activities for which BLM has no discretion. Some activities that involve BLM may not require BLM approval (e.g. reciprocal road rights-of-way). If an action is not authorized, funded, or carried out by BLM, or BLM no longer retains discretionary authority over the activity, it is considered to be non-discretionary with respect to the ESA and BLM is not responsible for conducting a Section 7 consultation. However, provisions of the ESA may be applicable to the person or persons involved with the activity. In such situations, BLM's responsibilities are as follows.

1. If BLM becomes aware of a non-discretionary activity involving Bureau administered lands that may affect listed or proposed species, BLM should notify the person or persons involved of the possible conflict with the ESA.

2. BLM should take all actions allowed or required under regulations, law, and policy that would result in avoiding or minimizing adverse effects on listed or proposed species and designated or proposed critical habitat.

3. If the person or persons involved with the non-discretionary activity wish to develop measures that would eliminate conflicts with the ESA, the BLM shall arrange for the participation of BLM specialists and, if needed, specialists from FWS and/or NMFS during the process of developing such measures.

.22 Conservation of species other than under the ESA. The ESA establishes policy, procedures, and requirements for the conservation of listed species, designated critical habitat, proposed species, and proposed critical habitat. BLM policy is broader than the ESA in that it addresses special status species that may be affected by BLM activities, as well as federally listed and proposed species. It is in the interest of the public and the affected special status species for BLM to undertake conservation actions for such species before listing is warranted or the designation of critical habitat becomes necessary. It is also in the interest of the public and the affected special status species for BLM to undertake conservation actions that improve the status of such species to the point where their special status recognition is no longer warranted. By doing so, BLM will have greater flexibility in managing the public lands to accomplish native species conservation objectives, while fulfilling other FLPMA mandates.

A. Planning. The BLM should obtain and use the best available information deemed necessary to evaluate the status of special status species in areas affected by land use plans or other proposed actions and to develop sound conservation practices. Land use plans shall be sufficiently detailed to identify and resolve significant land use conflicts with special status species without deferring conflict resolution to implementation-level planning. Implementation-level planning should consider all site-specific methods and procedures which are needed to bring the species and their habitats to the condition under which the provisions of the ESA are not necessary, current listings under special status species

categories are no longer necessary, and future listings under special status species categories would not be necessary.

B. Coordination and Cooperation with Tribes. The relationship between the United States and Indian tribes is defined by treaties, statutes, executive orders, judicial decisions, and agreements, and differentiates tribes from other entities that deal with, or are affected by, the Federal government. Tribes are self-governing with fundamental rights to set their own priorities and make decisions affecting their resources and distinctive ways of life. However, as with other entities, coordination on the conservation and management of resources would benefit the tribal resources and public resources as they relate to special status species.

1. Secretarial Order 3206 on American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the ESA. The Secretarial Order, signed on June 5, 1997, by the Secretary of the Interior and Secretary of Commerce clarifies the responsibilities of agencies of the Department of the Interior and Department of Commerce when actions taken under the authority of the ESA and associated implementing regulations affect, or may affect, Indian land, tribal trust resources, or the exercise of American Indian tribal rights. The Secretarial Order does not apply to Alaska. In addition to BLM Policy 8160, the BLM shall administer the conservation provisions of the Secretarial Order as follows:

a. Whenever the BLM is aware that its actions planned under the ESA may impact tribal trust resources, the exercise of tribal rights, or Indian lands, the BLM shall consult (as defined in BLM Handbook H8160-1 and distinct from ESA consultation procedure) with the tribes that are affected and seek their participation to the maximum extent practicable. This shall include providing affected tribes adequate opportunities to participate in data collection, consensus seeking, and associated processes.

b. The BLM shall assist Indian tribes in developing and expanding tribal programs that promote the health of ecosystems upon which special status species depend. This includes:

(1) Offering and providing such scientific and technical assistance and information as may be available for the development of tribal conservation and management plans to promote the maintenance, restoration, enhancement and health of the ecosystems upon which special status species depend.

(2) Cooperatively identifying appropriate management measures to address concerns for such species and their habitats.

c. The BLM shall give deference to tribal conservation and management plans for tribal trust resources that govern activities on Indian lands and that address the conservation needs of listed species.

d. At the earliest indication that it is considering management actions that may be restrictive to tribes, for the conservation of any species, the BLM shall promptly notify all potentially affected tribes, and assist tribes in identifying and implementing tribal conservation and other measures necessary to protect such species.

e. The BLM should assist the FWS and/or NMFS and other Federal agencies with their required actions under the Secretarial Order regarding the conservation of species.

f. The BLM should coordinate with the affected tribes and the BIA on BLM's Section 7 consultations of which it is aware that tribal rights or tribal trust resources may be affected.

g. Consistent with the provisions of the Privacy Act, the Freedom of Information Act, and the Department's ability to continue to assert FOIA exemptions, the BLM shall make available to a tribe all information held by the BLM that is related to a tribe's Indian lands and tribal trust resources.

h. The BLM shall, when appropriate and at the request of a tribe, pursue intergovernmental agreements to formalize arrangements involving special status species.

2. BLM 8160 Policy. The BLM should use any opportunity available under its 8160 Policy to seek coordinated conservation activities with tribes.

C. Agreements, Assessments, and Cooperative Strategies for Conservation. The BLM shall work cooperatively with other agencies, organizations, governments, and interested parties for the conservation of plants and animals and their habitats to reduce, mitigate, and possibly eliminate the need for their identification as a special status species. Cooperative efforts are important for conservation based on an ecosystem management approach and will improve efficiency by combining efforts and fostering better working relationships. Stabilizing and improving habitat conditions before a species is listed may allow more conservation and other management flexibility, reduce conflicts, and reduce the cost of conservation.

1. Requests for Technical Assistance on Candidate Species. The FWS and/or NMFS may have additional information on candidate species that was used as the basis for

adding the species to the candidate species list. Although requests for technical assistance are not required by any statute, the BLM would best serve the interests of the public and the species involved by ensuring that the best scientific information available is used to make final decisions. To help ensure that the best scientific data are available, the BLM shall request technical assistance and information from the FWS and/or NMFS as needed on candidate species for use in the BLM decision-making process to avoid actions that contribute to the need to list. The FWS and/or NMFS often provide advisory recommendations for reducing adverse effects to candidate species.

2. Habitat Conservation Assessments and Conservation Agreements. In an effort to eliminate the need for listings under the ESA, the BLM shall participate in developing habitat conservation assessments leading to conservation agreements for proposed, candidate, and sensitive species, groups of species, or specific ecosystems. This is pursuant to the MOU (94-SMU-058, dated June 25, 1994) entered into by the BLM, U. S. Forest Service, FWS, NMFS and the National Park Service to establish an interagency framework for cooperation and participation to achieve this objective. BLM's role in implementing the MOU is as follows:

a. State Directors and line managers shall make available employees with appropriate skills and expertise to support cooperative efforts for the development and implementation of habitat conservation assessments and conservation agreements.

b. State Directors and line managers should identify opportunities for habitat conservation assessments or, if none exists, initiate the development of these assessments and conservation agreements for the purpose of furthering the conservation of the subject species on BLM-administered and other lands.

c. The BLM should use habitat conservation assessments to develop conservation agreements that outline the procedural assurance necessary to reduce, eliminate, or mitigate specific threats to proposed, candidate, or sensitive species; to develop an ecosystem management approach to conservation on Federal lands; to facilitate coordination and cooperation with others, such as States and private entities, to achieve species and habitat conservation through an ecosystem management approach that extends beyond Federal land.

d. The BLM should be signatory to conservation agreements developed under the MOU if public land or BLM authorization is involved.

e. Contingent upon results of habitat conservation assessments, applicable objectives of conservation agreements, and appropriate procedures to ensure adherence to all legal requirements in analyzing changes, the BLM should establish new management direction for habitat conservation. Where appropriate, this will include amendment or revision of land use plans to provide a basis for and commitment to the conservation of the species.

f. The BLM should consider successful implementation of the program in evaluating line officer performance. Key leaders who contribute to notable successes will be recognized on a continuing basis.

3. Other Cooperation and Coordination. Conservation activities in general would benefit from cooperation and coordination with other agencies, organizations, governments, and interested parties.

a. The BLM in coordination with the FWS and/or NMFS and other interested entities should develop habitat conservation assessments and conservation agreements for any special status species that the Bureau feels would benefit from such an agreement.

b. The BLM should provide technical assistance to, and coordinate with appropriate State agencies and other agencies, organizations, or private landowners developing Habitat Conservation Plans.

c. The BLM should seek partnerships and cooperative relationships with other agencies, organizations, governments, and interested parties for the purposes of conservation of species and administration of the ESA. The BLM already has MOU's with several agencies and organizations. Partnerships beyond existing MOU's are encouraged. Partnerships and cooperative relationships should be sought with agencies that include, but are not limited to, the following:

(1) Other resource management and regulatory agencies, such as the Natural Resource Conservation Service, State fish and wildlife agencies, State forestry agencies, State water quality agencies, and municipal parks and recreation agencies.

(2) State and local governments, such as governor's offices, county commissioners, and city councils, county extension units, watershed councils, and resource conservation districts, and interested landowners.

(3) Federal advisory groups, such as Resource Advisory Councils, Provincial Advisory Boards, and Grazing Advisory Boards.

(4) Research entities, such as the Biological Resource Division of the U. S. Geological Survey, and university researchers.

(5) Professional societies, such as The Wildlife Society, the American Fisheries Society, and the Society for Ecological Restoration.

(6) Groups representing private sector interest in resources and resource uses, such as Trout Unlimited, National Audubon Society, The Nature Conservancy, National Cattlemen's Beef Association, and American Sports Tackle Manufacturers.

d. The BLM's role in partnerships and cooperative relationships should include, but not be limited to, developing conservation programs based on ecosystem management; providing expertise for programs affecting lands outside of the public land if benefits to BLM managed resources may result; and developing challenge cost-share projects, to support conservation activities.

4. Ecosystem Management and Native Biodiversity. BLM management should take into consideration ecosystem management and the conservation of native biodiversity to reduce the likelihood of placing any native species on a special status species list.

a. For rangelands, the BLM shall take actions that progress towards the conditions indicating attainment of the Fundamentals of Rangeland Health (described in 43 CFR 4180.1) and associated Standards (43 CFR 4180.2). Such actions would include management that restores, protects or enhances those resources necessary to support, as site potential and BLM authorities allow, a full complement of native species in their historical proportions.

b. The BLM should participate in and coordinate with State Natural Heritage Programs.

c. The BLM should seek opportunities to conserve and improve special status species and habitats for native animals and wildlife in the development of land use plans, activity plans, and in other BLM-authorized, funded or approved activities.

6840 - SPECIAL STATUS SPECIES MANAGEMENT

Glossary of Terms

-A-

action, activities, or programs: unless attributed to another entity, all actions of any kind authorized, funded, or carried out by BLM in whole or part. Examples include, but are not limited to: (1) actions intended to conserve special status species or their habitat; (2) the promulgation of regulations; (3) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; (4) loss of habitat or transferring habitat out of Federal ownership; or (5) actions directly or indirectly causing modifications to the land, water, or air.

action area: areas to be affected directly or indirectly by the action, not merely the immediate area involved in the action.

adversely (adverse) affect: to have a detrimental effect on any or all portions of the life cycle of a threatened or endangered species or on its habitat or a component thereof.

advisory recommendations: recommendations provided by the FWS during informal consultation, conferences, or as technical assistance on candidate species, proposed species, or proposed critical habitat that assist in minimizing or avoiding effects of proposed actions.

animals: any member of the animal kingdom, including without limitation any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof. As used here, the words "animals," "fish or wildlife," and "wildlife" are interchangeable.

applicant: any person who requires formal approval or authorization from BLM as a prerequisite to conducting an action. This can include an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; any State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States.

-B-

batched consultation or batched conference: a single consultation or conference effort and biological assessment on a logical grouping of projects, activities, or programs of a similar nature. Projects, activities, or programs typically should occur in the same watershed, geographic area, administrative units or have some other elements in common. The biological assessment may be interagency (e.g., BLM and FS). The intent is to facilitate the consultation and conference process.

biological assessment: the document prepared by or under the direction of BLM concerning listed and proposed species and designated and proposed critical habitat that may be present in the action area and contains the BLM's determination of potential effects of the action on such species and habitat. Biological assessments are required for formal consultations and conferences on "major construction projects." They are recommended for all formal consultations and formal conferences and many informal consultations where a written evaluation of the effects of an action on listed or proposed species and on designated or proposed critical habitat is needed. Also referred to as a BA.

biological opinion: the document which includes: (1) the opinion of the FWS and/or NMFS as to whether or not a Federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of designated critical habitat; (2) a summary of the information on which the opinion is based; and (3) a detailed discussion of the effects of the action on listed species or designated critical habitat. Depending upon the determination of jeopardy or non-jeopardy, the biological opinion may contain reasonable and prudent alternatives, a statement of anticipated take of listed animals and conservation recommendations for listed plants. Also referred to as a BO.

BLM managed lands: public lands managed by BLM whether they are held in fee title or BLM manages the surface or subsurface.

-C-

candidate species: taxa for which the FWS has sufficient information on their status and threats to support proposing the species for listing as endangered or threatened under the ESA but for which issuance of a proposed rule is currently precluded by higher priority listing actions. Separate lists for plants, vertebrate animals, and invertebrate animals are published periodically in the Federal Register.

conference: a process which involves informal discussions between BLM and the FWS and/or NMFS regarding the likely impact of an action on proposed species or proposed critical habitat, and recommendations to minimize or avoid the adverse effects. Formal conference, following procedures for formal consultation, may be requested by the BLM if a proposed species is soon to be listed or project impacts are expected to continue after listing and involve take.

conference opinion: document issued by the FWS and/or NMFS as a result of formal conference, similar to a biological opinion. The document may be adopted as biological opinion when the proposed species becomes listed or critical habitat becomes designated if no significant new information is developed and no significant changes to the action are made that would alter the content of the opinion.

conference report: document issued by the FWS and/or NMFS as a result of conference process that includes conclusions and advisory recommendations to the Federal agency and applicant.

conservation (also conserve and conserving): 1) Definition from ESA Section 3(3) and as applied to threatened, endangered and proposed species in this policy: to use, and the use of, all methods and procedures that are necessary to bring a listed species to the point at which the measures of the ESA no longer apply. Methods and procedures of conservation include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transportation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking of animals. 2) As applied to other special status species, to use, and the use of, methods and procedures such that there is no longer any threat to their continued existence or need for continued listing as a special status species.

conservation agreement: A formal written document agreed to by FWS and/or NMFS and another Federal agency, State agency, local government, or the private sector to achieve the conservation of candidate species or other special status species through voluntary cooperation. It documents the specific actions and responsibilities for which each party agrees to be accountable. The objective of a conservation agreement is to reduce threats to a special status species or its habitat. An effective conservation agreement may lower species' listing priority or eliminate the need for listing.

conservation recommendations: non-mandatory suggestions by the FWS and/or NMFS in biological opinions which will reduce any adverse effects of a proposed action on listed species or critical habitat, or which will assist the BLM in complying with its obligations under Section 7 of the ESA, especially Section 7(a)(1) [see 50 CFR 402.02].

consultation with tribes: As defined in BLM Handbook H8160-1, the active, affirmative process of (1) identifying and seeking input from appropriate Native American governing bodies, community groups, and individuals and (2) considering their interests as a necessary and integral part of the BLM's decision making process.

critical habitat: (1) the specific areas within the geographical area currently occupied by a species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (i) essential to the conservation of the species and (ii) that may require special management considerations or protection, and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon determination by the FWS and/or NMFS that such areas are essential for the conservation of the species. Critical habitats are designated in 50 CFR Parts 17 and 226. The constituent elements of critical habitat are those physical and biological features of designated or proposed critical habitat essential to the conservation of the species, including, but not limited to: (1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and (5) habitats that are protected from disturbance or are representative of the historic geographic and ecological distributions of a species.

cumulative impact (ESA definition): Effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation. 50 CFR 402.02. (For reference purposes, the NEPA definition is: The impact on the environment which results from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor, but collectively significant actions taking place over a period of time. BLM Manual H-1790-1).

-D-

designated critical habitat: see critical habitat.

destruction or adverse modification: direct or indirect alteration of critical habitat which appreciably diminishes the value of the habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

direct effect: see effects of the action.

discountable effect: effects that are extremely unlikely to occur.

-E-

early consultation: a component of the consultation process that has been requested by Federal agency on behalf of a prospective applicant after it has been determined that the proposed action may affect listed species or designated critical habitat.

effects of the action: the direct and indirect effects of an action on the species or critical habitat that will be added to the environmental baseline. It includes the direct and indirect effects of the Federal action under consideration together with the effects of actions that are interrelated or interdependent with the action. Direct effects are those that are caused by the proposed action and occur at the same time and place. Indirect effects are those that are caused by the proposed action and are later in time or farther removed in distance, but are still reasonably foreseeable. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration.

endangered species: see special status species.

experimental populations: an introduced population (including any offspring arising solely therefrom) that has been so designated in accordance with the procedures of 50 CFR Subpart H Section 17.80 but only when, and at such times as, the population is wholly separate

geographically from non-experimental populations of the same species. Where a part of an experimental population overlaps with natural populations of the same species on a particular occasion, but is wholly separate at other times, specimens of the experimental population will not be recognized as such while in the area of overlap. That is, experimental status will only be recognized outside the areas of overlap. Thus, such a population shall be treated as experimental only when the times of geographic separation are reasonably predictable; e.g. fixed migration patterns, natural, or manmade barriers. A population is not treated as experimental if total separation will occur solely as a result of random and unpredictable events.

essential experimental population: an experimental population whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild. All other experimental populations are to be classified as nonessential.

nonessential experimental populations: those populations whose loss would not appreciably affect the continued existence of the species.

-F-

fish or wildlife: see animals.

formal conference: see conference.

formal consultation: a component of the consultation process under Section 7 of the ESA that commences with the BLM's written request for consultation after it has determined that its action may affect and is likely to adversely affect listed species or designated critical habitats.

-H-

habitat: the place where an organism (plant or animal) lives. There are four major divisions of habitat, namely, terrestrial, freshwater, estuarine, and marine.

habitat conservation assessment: A comprehensive, state-of-knowledge technical document that describes life history, habitat requirements and management considerations for a species or group of species throughout its occupied range on the lands managed by the cooperating agencies. Habitat conservation assessments are often done as a forerunner to preparation of a conservation agreement.

Habitat Conservation Plan: Under section 10(a)(2)(A) of the ESA, a document that is a mandatory component of an incidental take permit application, also known as a Conservation Plan.

-I-

incidental take: see take.

indirect effects: see effects.

informal consultation: a component of the consultation process that includes all discussions, correspondence, etc., between the FWS and/or NMFS and the BLM agency or the designated non-Federal representative, prior to formal consultation, to determine if a proposed action may affect listed species or critical habitat and to use FWS and/or NMFS expertise, if necessary, to modify the proposed action to avoid potentially adverse effects.

interdependent action: see effects.

interrelated action: see effects.

insignificant effect: impact that is small enough in scale that it take should never occur and that, based on best judgment, a person should not be able meaningfully to measure, detect, or evaluate insignificant effects.

-J-

jeopardize the continued existence of (also jeopardize, cause jeopardy to): engage in an action which reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of listed species in the wild by reducing the reproduction, numbers, or distribution of a listed species or otherwise adversely affecting the species.

-L-

listed species: see special status species.

-M-

major construction activity: a construction project (or other undertaking having similar physical impacts) which is a major Federal action significantly affecting the quality of the human environment as referred to in NEPA. These include dams, buildings, pipelines, roads, water developments, channel improvements, dredging, blasting, and other such undertakings which significantly modify the physical environment.

may affect: the conclusion that a proposed action may pose any effect on listed species or designated critical habitat.

multiple use: the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to

conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output (FLPMA).

-P-

person: an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, or any State or political subdivision thereof, or of any foreign government.

plant: any member of the plant kingdom, including seeds, roots, flowers, and other parts thereof.

preliminary biological opinion: an opinion issued by the FWS and/or NMFS as a result of early consultation.

programmatic consultation: consultation addressing an agency's multiple actions on a program, regional or other basis.

proposed critical habitat: habitat proposed in the Federal Register to be designated as critical habitat under Section 4 of the Endangered Species Act.

proposed species: see special status species.

-R-

reasonable and prudent alternatives: those alternatives identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, can be implemented consistent with the scope of the action agency's legal authority and jurisdiction, are economically and technologically feasible, and would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of designated critical habitat. Alternatives not considered reasonable and prudent are those that were not previously under consideration (e.g. locating a project in uplands instead of requiring a Corps permit to fill a wetland), require actions of a third party not involved in the proposed action, require actions on lands outside of the BLM's jurisdiction or authority.

recovery: improvement in the status of listed species to the point at which the measures provided by the ESA are no longer necessary.

request for technical assistance: communication with the FWS and/or NMFS concerning actions that will potentially have an adverse effect on a candidate species or its habitat. The objectives of these requests are to obtain as much biological information as possible about the species involved and its habitat, the reasons the species is designated as a candidate species, and their recommendations on how the proposed management action might be carried out without contributing to the further deterioration of the species habitat.

-S-

species: any species or subspecies of fish or wildlife or plants (and in the case of plants, any varieties), and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.

special status species: includes the following;

(1) proposed species- species that have been officially proposed for listing as threatened or endangered by the Secretary of the Interior. A proposed rule has been published in the Federal Register.

(2) listed species-species officially listed as threatened or endangered by the Secretary of the Interior under the provisions of the ESA. A final rule for the listing has been published in the Federal Register.

(A) endangered species - any species which is in danger of extinction throughout all or a significant portion of its range.

(B) threatened species - any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(3) candidate species -species designated as candidates for listing as threatened or endangered by the FWS and/or NMFS. A list has been published in the Federal Register.

(4) State listed species -species listed by a State in a category implying but not limited to potential endangerment or extinction. Listing is either by legislation or regulation.

(5) sensitive species are those designated by a State Director, usually in cooperation with the State agency responsible for managing the species and State Natural heritage programs, as sensitive. They are those species that: (1) could become endangered in or extirpated from a State, or within a significant portion of its distribution; (2) are under status review by the FWS and/or NMFS; (3) are undergoing significant current or predicted downward trends in

habitat capability that would reduce a species' existing distribution; (4) are undergoing significant current or predicted downward trends in population or density such that federal listed, proposed, candidate, or State listed status may become necessary; (5) typically have small and widely dispersed populations; (6) inhabit ecological refugia or other specialized or unique habitats; or (7) are State listed but which may be better conserved through application of BLM sensitive species status.

status review: process of examination by FWS and/or NMFS to determine if a species situation warrants protection under the ESA. Results are published in the Federal Register.

survival: for determination of jeopardy or adverse modification, the species' persistence as listed or as a subset identified by the FWS and/or NMFS for recovery management purposes, beyond the conditions leading to its endangerment, with sufficient resilience to allow for the potential recovery from endangerment. It is the condition in which a species continues to exist into the future while retaining the potential for recovery. This condition is characterized by a species with a sufficient population, represented by all necessary age classes, genetic heterogeneity, and number of sexually mature individuals producing viable offspring, which exists in an environment providing all requirements for completion of the species' entire life cycle, including reproduction, sustenance, and shelter.

-T-

take: harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The term applies only to fish and wildlife.

(1) incidental take Any taking otherwise prohibited, if such taking is incidental to, and not the purpose of, the carrying out an otherwise lawful activity.

(2) harm as used in the definition of take means to commit an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering.

(3) harass as used in the definition of take means to commit an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns, which include but are not limited to breeding, feeding, or sheltering.

threatened species: see special status species.

tribes (Indian tribes): any Federally recognized Indian tribe, band, nation, pueblo, community or other organized group within the United States which the Secretary of the Interior has identified on the most current list of Federally recognized tribes maintained by the Bureau of Indian Affairs.

(1) tribal trust resources: those natural resources, either on or off Indian lands, retained by, or reserved by or for Indian tribes through treaties, statutes, judicial decisions, and executive orders, which are protected by a fiduciary obligation on the part of the United States.

(2) tribal rights: those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and which give rise to legally enforceable remedies.

(3) Indian lands: any lands title to which is either 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

-W-

wildlife: see animals.