



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

FEB 15 2012

Chief Tom Tidwell
USDA Forest Service (Chief's Office)
201 14th Street, SW
Mailstop 1144
Washington, DC 20024-1144

Mr. Tidwell:

Enclosed are the National Marine Fisheries Service's (NMFS) Biological Opinion on the effects, and a Conservation Review of the U.S. Forest Service's Land Management Planning Rule on endangered and threatened species under NMFS' jurisdiction and critical habitat that has been designated for those species. We have prepared the biological opinion pursuant to section 7(a)(2) and the conservation review pursuant to section 7(a)(1) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1536(a)(2)).

To conduct a formal analysis of the effects of the Planning Rule on endangered and threatened species under NMFS' jurisdiction and critical habitat that has been designated for those species at a national scale, we applied a programmatic assessment framework that is described in detail in Chapter 2.0 of our Biological Opinion.

Representatives of our office met regularly with the U.S. Forest Service and our counterparts at the U.S. Fish and Wildlife Service during this formal consultation. Those interactions appeared to have been very productive and U.S. Forest Service personnel seemed very committed to developing regulatory language that would require land management plans to comply with the requirements of both section 7(a)(2) as well as section 7(a)(1) of the ESA. Those efforts appear to have resulted in regulatory language that allows the Forest Service to satisfy its various mandates while fulfilling its commitment to comply with section 7(a)(2) and section 7(a)(1).

Based on our assessment, we concluded that the U.S. Forest Service has structured the Planning Rule in a manner that insures that land management plans that are developed consistent with the requirements of the Planning Rule should, as a general matter, comply with the requirements of section 7(a)(2) of the ESA. For reasons that we explain in the Incidental Take Statement, this Opinion does not exempt the "take" of endangered or threatened species under NMFS' jurisdiction.

This Biological Opinion and Conservation Review conclude section 7 consultation on the Land Management Planning Rule. Normally, the Forest Service would be required to reinstate formal consultation on the proposed action, where it retains discretionary involvement or control over the action and if: (1) the amount of extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action.

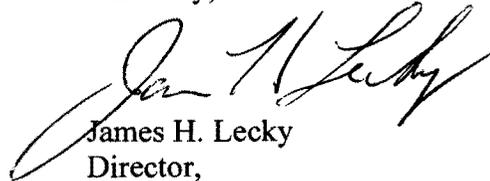


In instances where the amount or extent of incidental take is exceeded, Action Agencies are normally required to reinitiate section 7(a)(2) consultation immediately. However, because this Biological Opinion did not exempt the "take" of endangered or threatened species, the U.S. Forest Service would have to engage in formal consultation with NMFS on specific land management plans or projects or actions taken subsequent to those plans and biological opinions that conclude those consultations would exempt any incidental take that is warranted or appropriate.

When a new species is listed or critical habitat is designated that may be affected by an action, Action Agencies are normally required to immediately reinitiate consultation. Since the Planning Rule could be effective for many decades, the specific species affected and critical habitat designation could and almost certainly will change over time. However, newly listed species and/or designated critical habitat would be addressed at the specific land management plan level since the U.S. Forest Service would have to engage in formal consultation with NMFS upon a new listing and/or designation, and the biological opinions that conclude those consultations would evaluate the effects of the actions on these newly listed species and/or critical habitat.

If you have any questions regarding this Opinion, please contact me at (301) 427-8400.

Sincerely,

A handwritten signature in black ink, appearing to read "James H. Lecky", is written over the typed name and title.

James H. Lecky
Director,
Office of Protected Resources