



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

January 23, 2003

Bill Ballard
Alaska Department of Transportation and
Public Facilities
3132 Channel Dr.
Juneau, Alaska 99801

Re: Interagency Coordination and Consultation Agreement

Dear Mr. Ballard:

The National Marine Fisheries Service (NMFS) has reviewed the latest draft of the Interagency Coordination and Consultation Agreement (ICCA) prepared by the Alaska Department of Transportation and Public Facilities (DOT&PF). The purpose of the ICCA is to streamline environmental reviews for transportation projects.

NMFS supports the concept of an agreement that would streamline the permitting process while maintaining appropriate procedures to conserve living marine resources and their habitats. Unfortunately, the proposed ICCA would not allow sufficient opportunity to protect resources of concern to NMFS.

Specific Comments

Section 1

I. Purpose

Items #1 and #2 seem redundant. NMFS recommends that item #2 be placed in the opening statement so as to read: "The purpose of this interagency agreement is to quickly and effectively resolve environmental issues by:" and then list the remaining items.



III. Integration of Applicable Project Reviews and Approvals

There is a discrepancy in the agencies identified here. This section discusses projects funded by the Federal Aviation Administration (FAA) and the Federal Highway Administration (FHA), while Section II (Applicability) states it applies to all DOT&PF funded transportation projects requiring environmental approval under FHA regulations 23 CFR.

Paragraph two of this section states that DOT&PF will fund the publishing of all public notices for projects developed under this agreement. NMFS is concerned about the appropriateness of this proposal. Since DOT&PF is the project proponent, and the public notices are the mechanism by which the regulating agencies solicit comments from the public, would funding the public notices be a conflict of interest?

IV. Project Coordination

The first sentence of the first paragraph states that signatory agencies "agree to dedicate staff to coordination and consultation of DOT&PF projects." In concept NMFS agrees with this premise. NMFS currently reviews all projects that have the potential to adversely affect living marine resources, including Essential Fish Habitat. However, staffing and funding levels, as well as legal mandates, may result in a restructuring of priorities. NMFS suggest that unless funding is provided with the ICCA to pay for the salaries of dedicated staff, the wording be changed to state: "Signatory agencies agree to designate staff responsible for coordinating and consulting on DOT&PF projects." Alternatively, this information would be better addressed in under *VII. Participation*.

In paragraph four, the last sentence "Signatory agencies may choose to not respond to the scoping letter but no response is agreed to mean that the agency has no significant concerns with the project as proposed". This statement does not account for problems out of the control of the agency (e.g., delays in mail delivery). NMFS suggests the sentence be reworded as follows: "Signatory agencies may choose to not respond to the scoping letter but no response is agreed to mean that the agency has no significant concerns with the project as proposed if confirmed by DOT&PF in an e-mail or voice response."

Paragraph six states: "To expedite completion of major environmental documents (i.e. EA and EIS), DOT&PF will request concurrence from signatory agencies (see Section 2: XVI)." There are two issues here. First, what will DOT&PF be asking concurrence on? Second, the reference to Section 2: XVI does not follow. As currently written, Section 2: XVI discusses Construction and Monitoring. What is the connection between these two sections?

V. Environmental Enhancements and Compensatory Mitigation

The second sentence, "Signatory agencies agree to assist DOT&PF in identifying environmental enhancement opportunities and agree that compensatory mitigation will not be required for the resulting unavoidable impacts," appears to be discussing two different things. If on a project specific basis environmental enhancement opportunities are identified, then it is indeed probable that compensatory mitigation will not be required. However, on a project specific basis, despite avoidance and minimization measures or other environmental enhancements, there may still be the need for compensatory mitigation. Inclusion of such mitigation would not necessarily cause a delay in the project review and permitting process. NMFS is not sure why this discussion is included in the ICCA.

The second paragraph in this section states "DOT&PF will provide compensatory mitigation for the unavoidable loss of high-value habitat at a ratio not to exceed 2:1." How was this rationale developed? This section also defines high-value habitat. What is the basis for this definition? We are concerned that it does not include certain habitat types that may be very important for living marine resources.

Likewise the last section states: "When compensatory mitigation is provided through payment of an in-lieu fee, the fee will be the assessed fair-market value of the land being affected, with the payment made in a ratio of 1.5:1." This ratio and method need further analysis and justification in the document.

In summary, NMFS recommends that the discussion of how to include mitigation into the streamlined process be included in Section 2 of the ICCA. Since not all wetlands have equal

values, adequate compensation for wetland losses from a proposed project should be established by a thorough functional analysis of the particular type of wetlands on a project-by-project.

Section VIII. Dispute Resolution

The document states that "Any signatory agency may initiate dispute resolution procedures" for persons including nonconcurrence. We remind DOT&PF that concurrence points still need to be defined. NMFS recommends additional discussion to clarify what is meant under Reason #5 (Departure from the process) and Reason #6 (Failure to share information after a formal request).

Under "Secondary Dispute Resolution", item #2, states that "The notice from DOT&PF will include a statement of the issue(s) and any pertinent background material." NMFS recommends that the agencies be given an opportunity provide input into this notice.

Section 2

I. Planning and Program Development

The second paragraph states: "During the development of the STIP, DOT&PF area planners will solicit input from regulatory and resource agencies. Specifically, they will ask agencies to comment on the draft Needs List and draft State Transportation Improvement Program (STIP)." Is this meant to be a Concurrence Point?

The fourth paragraph states: "Agencies will also identify projects evaluated in the draft STIP that they believe could result in significant or unacceptable environmental impacts." NMFS ability to do so will be dependent upon how much information is provided in the STIP.

III. Scoping Phase

The last paragraph on page 1 of this section states: "signatory agencies agree that they will not provide comments unless the project could affect high value habitat.

As previously defined in the ICCA, "high value" has been defined as a subset of the resources of concern to NMFS. There may be instances when, for example, habitat types such as forested wetlands will be of concern for fishery resources, even though they are considered low value in this document.

In the same section, last sentence "Signatory agencies will notify DOT&PF by e-mail or phone within 10 days of receipt of the scoping letter if they will be providing comments..."

This approach is reminiscent of the Corps of Engineers' direction on Nationwide permits. However, Nationwide permits are predetermined as minimal impacts and most transportation projects do not fit that category. Scoping comment deadlines should reflect the complexity of the project.

V. Alternative to be Carried Forward (EA and EIS Projects)

This section indicates that "the DOT&PF regional environmental coordinator will consult with the agencies and present the alternatives to be carried forward in the NEPA document (i.e. EA or DEIS)." The process for consultation with the agencies is not defined, which is in direct contrast to the detailed process defined for scoping.

VI. Preliminary Agency Review and Comment

On page 3 of this Section, the first bullet states:

"The DOT&PF regional environmental coordinator will request concurrence from signatory agencies that:

"The purpose and need does restrict the range of reasonable alternatives"

NMFS reminds DOT&PF that this has sometimes been a point of disagreement on projects. Also, this statement appears to quell discussion on the matter, and is contrary to the intent of NEPA. NMFS recommends that this statement be reworded to say "The range of alternatives is reasonable for the purpose and need"

The following paragraph states that agencies will have 15 days to respond to a "single request for concurrence", followed by a conflict resolution process should the agencies not concur. As with the comment for Section 1 Part IV., DOT&PF should not construe a non-response as non-concurrence, and should check

with agencies by phone or e-mail to ensure receipt/staff availability to respond. This paragraph does not address a time frame for the "three individual requests"

VII. Preliminary Agency Review and Comment

The last sentence states that "Resource agencies will submit permit applications after the pre-draft review but prior to approval of the EA or DEIS" This statement is confusing. Normally in this process resource agencies do not submit applications for permits.

IX. Preferred Alternative

This section should also acknowledge that the action agency preferred alternative may be different from the environmentally preferred alternative in some cases.

XII. Approved Revised EA or FEIS

This section states "During this period, the agencies will complete permit and related reviews concurrent with their review of the final document." The agencies and the permit reviews should be specified.

XVI. Construction and Monitoring

This section states that "DOT&PF could request agency participation in the monitoring of construction activities, or mandate agency participation in monitoring as a permit condition." The Corps of Engineers cannot mandate staffing or funding for another Federal agency to participate in monitoring.

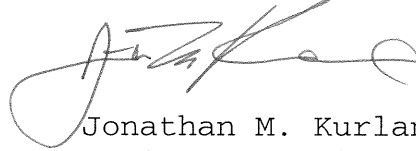
CE and EA/EIS Process Flowcharts

The diagram culminates in an "Issue Permit" box. NMFS recommends that it be made clear whether this is for a NEPA Process or a merged process for a Department of the Army permit.

Thank you for the opportunity to review the draft ICCA. NMFS remains interested in your efforts to streamline the environmental review process, and we are open to discussion to address issues of concern.

Please contact Ms. Jeanne Hanson at (907) 271-3029 or Ms. Linda Shaw at (907) 586-7510 should you have additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan M. Kurland', written in a cursive style.

Jonathan M. Kurland
Assistant Regional Administrator
for Habitat Conservation

cc: Tim Haugh
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