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Memorandum

To: Regional Directors, Regions 1-7 and California and Nevada Operations  
To: Regional Administrators, NOAA Fisheries

From: Director, Fish and Wildlife Service  
From: Dr. William T. Hogarth - Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration *William T. Hogarth*

Subject: Alternative Approaches for Streamlining Section 7 Consultation on Hazardous Fuels Treatment Projects

After the damaging wildland fire season of 2000, the Secretaries of Interior and Agriculture developed a report outlining a new approach to managing wildland fires. This report, together with the accompanying budget requests, strategies, plans, and direction have become known as the National Fire Plan (NFP). The NFP provides the philosophical and policy foundation for hazardous fuels reduction as well as other Federal interagency fire management activities. The NFP calls for a substantial increase in the number of forested acres treated annually to reduce hazardous fuels, and Congress has increased funding to new and existing programs to handle the increased workload.

The President's Healthy Forest Initiative will implement core components of the National Fire Plan's 10-year Comprehensive Study and Implementation Plan. As part of this initiative, the Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NOAA Fisheries) (Services) have developed this guidance to assist in the section 7 consultation analysis for hazardous fuels treatment projects. Under section 7(a)(2) of the Endangered Species Act of 1973, as amended (Act), each Federal agency must, in consultation with the Services, ensure that any action it funds, authorizes, or carries out will not jeopardize the continued existence of listed species or adversely modify designated critical habitat. Although to date the section 7 consultation process has been able to stay ahead of the fire management agencies' hazardous fuels treatment projects, there is concern that as these agencies accelerate their activities to address public safety concerns, the consultation process could delay hazardous fuels treatment projects.

In an attempt to meet the fire management agencies' needs, the Services have developed this guidance to assist in streamlining the section 7 consultation process for hazardous fuels treatment projects. This guidance provides options for both fire management agencies and the Services (consulting agencies). It is designed to contain sufficient flexibility to meet the individual needs of varied circumstances across the landscape. This guidance proposes no new or additional requirements. In addition, this guidance encourages early coordination and

cooperation at the project planning stage, “batching” of similar projects, and use of design criteria or screens to streamline the consultation process while minimizing the potential for adverse effects to listed species and their habitats at both the landscape and site-specific levels. All procedures identified in this document are consistent with the requirements of section 7(a)(2) of the Act and its implementing regulations (50 CFR 402).

Several streamlining techniques have been found to be effective. Some of these are currently being used in some areas to facilitate consultation on projects being implemented under the National Fire Plan. “Project batching” is an established technique that has been used effectively to streamline section 7 consultations for well over a decade. Batching can be used both within a standard section 7 consultation process where a single consultation document is generated to meet the consultation requirements for multiple proposed actions, or in combination with programmatic consultation techniques to further streamline consultation. Programmatic consultations evaluate the potential for groups of related agency actions to affect listed and proposed species and designated and proposed critical habitat (hereafter referred to as “listed and proposed resources”). Implementation of these actions is typically guided by established standards, guidelines, or governing criteria to which they must adhere. Programmatic consultations may be conducted on any agency’s proposal to apply specified standards or design criteria to future proposed actions. Programmatic consultation techniques have the greatest potential to streamline the section 7 consultation process because much of the effects analysis is completed one time up front rather than repeatedly each time a new action, or batch of actions, is proposed. By completing this analysis up front in a programmatic consultation document, the anticipated effects of the action agency’s future projects can be added into the environmental baseline prior to their actual completion. This provides predictability for action agencies as they can be assured that the effects of their future actions have already been broadly accounted for. Thus, all other future section 7 consultations (i.e., those not covered in the programmatic consultation document) will be evaluated within the context of these effects having already been added to the environmental baseline. By completing this analysis up front, the process for completing consultation for future actions proposed under the programmatic consultation can be dramatically shortened.

Essential to all streamlining techniques is early coordination and cooperation among the consulting agencies. This early coordination is most effective when it is used to develop design criteria that ensure that future actions are consistent with the long-term conservation needs of the listed resources that will be affected. When the consulting agencies work through the process outlined in the “Pre-consultation Coordination and Cooperation” section below, they will be able to move projects that fit within the design criteria quickly through the subsequent project-specific consultations. We cannot stress enough the importance of staff from the consulting agencies developing good working relationships and a comprehensive understanding of the needs, constraints, and requirements of their counterparts. It may take some time to achieve the increased efficiencies that will result from this interagency collaboration as these relationships are developed and the groundwork for future consultations is laid.

Please note that while this guidance presents several alternative methods to streamline section 7 consultation, there are other methods that may be effective as well, many of which may be currently in use. Consulting agencies should jointly evaluate the specifics of their situation (e.g., the management strategies of the agencies, ecological conditions of the affected resources, available biological and technical expertise, workloads, etc.) to determine which techniques will work best for their circumstances. In addition, this guidance does not preclude agencies from using more traditional project-by-project consultation procedures to fulfill the requirements of section 7(a)(2).

### **Pre-consultation, Coordination and Cooperation**

In accordance with 50 CFR 402.14(c), to initiate formal section 7 consultation action agencies provide the Services with:

1. A description of the action to be considered;
2. A description of the specific area that may be affected by the action;
3. A description of any listed species or critical habitat that may be affected by the action;
4. A description of the manner in which the action may affect any listed species or critical habitat and an analysis of any cumulative effects;
5. Relevant reports, including any environmental impact statement, environmental assessment, or biological assessment prepared; and
6. Any other relevant available information on the action, the affected listed species, or critical habitat.

When initiating informal consultation an action agency uses this same information to determine whether its proposed action is likely to adversely affect listed species; this information is then provided to the Services for evaluation.

The Services and action agencies have found that by engaging in early planning and coordination while compiling the above information, the Services' Endangered Species specialists and the action agencies' technical experts can identify and address issues and make appropriate adjustments while there is the maximum flexibility to modify project designs. Such early coordination allows managers to make appropriate adjustments to proposed activities during the project design phase to incorporate species' habitat needs, thus facilitating and expediting the section 7 consultation process.

During section 7 consultation the Services must:

1. Review all relevant information that is provided by the action agency or is otherwise available;
2. Evaluate the current status of the listed and proposed resources to be affected (this includes an evaluation of the threats facing these listed and proposed resources), and the environmental baseline within the action area;
3. Evaluate the effects of the proposed action and cumulative effects on the listed and proposed resources;
4. Use the above information to determine the effects of the proposed action on the conservation status of the listed species (i.e., evaluate the potential for the proposed action to result in jeopardy or adverse modification). (From 50 CFR 402.14(g)).

In addition, the regulations direct the Services to discuss this analysis with the action agency. The early coordination process has been particularly effective when the action agencies and Services have jointly completed the requirements of consultation identified above and developed project design criteria. Such design criteria are often identified so that projects can be readily classified into one of three consultation effects categories – “no effect,” “not likely to adversely affect,” or “likely to adversely affect.” This approach provides predictability to action agencies as they can anticipate the procedures that will be used to complete section 7 consultation for projects that meet the specified design criteria. Developing projects in a manner that ultimately reduces adverse effects to listed and proposed resources can often most effectively streamline the consultation process.

Once a project has been developed to meet the design criteria, the consultation typically can be completed relatively quickly. For example, for hazardous fuels management actions in portions of the western United States, an interagency team comprised of representatives from the Forest Service, Bureau of Land Management, USFWS, and NOAA Fisheries has developed project design criteria that specify project components that ensure adverse effects are reduced for most of the species in that affected area. The project design criteria reduce adverse effects to threatened and endangered fish, wildlife, and plant species in the multi-state area. For more guidance on this issue, please see the “Development of Design Criteria for Hazardous Fuels Treatment Projects” section below.

Implementation of this process within the action agencies’ hazardous fuels treatment programs: (1) lays the foundation for the landscape-level perspective needed to implement programmatic consultation procedures that can greatly accelerate the consultation process; (2) provides the structure for identifying, evaluating, and balancing the short-term risks and long-term benefits of future activities; and (3) facilitates the development of section 7 consultation “triggers” (i.e., triggers for informal or formal consultation).

## **Development of Design Criteria for Hazardous Fuels Treatment Projects**

The following process for developing design criteria has been adapted from procedures that have been found to be effective. To begin the design criteria development process, the Services and action agencies should establish local Interagency Technical Teams consisting of biologists and personnel with appropriate hazardous fuels treatment expertise. In some instances it may be appropriate to use existing teams or existing team structures rather than forming new teams or restructuring existing teams. The appropriate level at which these teams should operate or be formed (e.g., watersheds, ranger districts, resource areas, Forest, etc.) will depend on affected resources, available expertise, local organization, workloads, etc. Each agency should ensure that it provides the appropriate expertise on each team. It is important that appropriate management involvement be maintained to ensure that potential policy issues can be addressed in a timely manner.

Design criteria can be developed through a 4-step process. These steps are designed to integrate species' needs with the needs of the action agencies and to provide a means to jointly fulfill the requirements of section 7 consultation identified in the "Pre-consultation, Coordination and Cooperation" section above. The interagency teams should use available relevant information to complete each step. This information should be updated as necessary.

1. Identify the threats to each listed species' conservation, both range-wide and within the action area, along with the level of concern associated with each threat. The threats that the action agencies can influence should be specifically identified. When possible, these threats should be categorized by the five listing factors identified in section 4 of the Act in order to best facilitate the development of future effects analyses;
2. Identify species conservation or management units (e.g., watersheds, ranger districts, resource areas, field offices, etc.), and the threats affecting each unit. These units may be based on various factors such as the ecological roles that each will be expected to fulfill in providing for the conservation of the species, the different fuels/fire risk reduction treatment mechanisms that will be used within the area, differences in ecological conditions, etc. The intent is to maintain flexibility in the scale of these units to allow them to vary with the needs of each individual situation. This step should use information developed in the previous step;
3. Identify species' conservation goals framed within the context of the action agencies' programs and authorities. These conservation goals should be derived from the information developed in the previous two steps, should consider the fire regime associated with the predominant vegetation types, and should utilize information regarding the specific types of future activities the action agencies will be proposing. In this step the biological justification for each goal and potential methods for achieving it should be presented. The goals typically should be broad in nature, allowing for flexibility in project designs to meet the needs of individual situations. In other words,

they should identify “what” to achieve rather than “how” to achieve it;

4. Develop conservation/management unit strategies for implementing future activities. This will typically involve the development of design criteria for future projects. These “sideboards” will be based on the information developed in the previous steps and will provide guidance to agency personnel for use in developing future actions. The sideboards should provide for efficient progress towards beneficial long-term objectives while ensuring that short-term effects do not rise to the level of jeopardy or adverse modification. If the sideboards are designed correctly, and if future projects are developed within them, the action agencies will have high assurance of the results of future section 7 consultations. This predictability can be invaluable to planning and preparation processes.

Completion of these steps fulfills two main streamlining objectives. First, it completes a substantial portion of the effects analysis at one time and early in the consultation process. In the standard consultation process, these steps are typically not completed until the latter part of consultation and are repeated for each individual proposed action. Completing this process early and at one time is the most effective technique for streamlining future consultations. Second, it will result in design criteria that reduce potential adverse effects to listed and proposed resources within the constraints of the action agency’s needs and provides a predictable consultation process.

### **Dispute Resolution Process**

While one of the goals of this process is to facilitate early coordination and cooperation among the consulting agencies, it is anticipated that at times representatives of the local Interagency Technical Teams may be unable to come to agreement. Should this occur, it is recommended that the issue be promptly raised through the dispute resolution teams identified below:

Local Issue Resolution Working Groups - Interagency teams of decision makers at the Forest, BLM Field Offices/District/Resource Area, or equivalent levels for other agencies, responsible for first level dispute resolution (Forest Supervisors, BLM District/Field Managers, USFWS Field Supervisors, NOAA Fisheries Supervisors, etc., or their representatives). These teams would normally meet on an *ad hoc* basis to resolve issues elevated from the local Interagency Technical Teams. Specific team representation depends upon the agency administrative units involved in the issue.

Regional/State Issue Resolution Working Group - Interagency teams of regional or state agency heads, e.g., the Regional Forester, BLM State Director, USFWS Regional Director, and NOAA Fisheries Regional Administrator, etc., or their representatives. These teams will meet on an *ad hoc* basis to resolve issues elevated from the Local Issue Resolution Working Groups. Specific team representation depends upon the agency administrative units involved in the issue.

National Issue Resolution Working Group - An interagency team of appropriate representatives of consultation agencies responsible for resolution of issues not resolved by the Regional/State Issue Resolution Working Group. These teams should be appointed by the agency heads.

The Interagency Resolution groups are intended to resolve any disagreements not resolved in lower level groups in a coordinated and timely manner.

If the local Interagency Technical Team cannot reach consensus on an issue, a review should be conducted by the Local Issue Resolution Working Group. Regional section 7 consultation specialists may be helpful in resolving such disputes. If the Local Issue Resolution Working Group cannot resolve the issue, a Regional/State Issue Resolution Working Group review should be initiated. If this group cannot resolve the issue, it should be elevated to the National Issue Resolution Working Group.

All Issue Resolution Working Group reviews can be initiated either by request of the applicable Interagency Technical Team, or an individual member agency after notification of the other team members. The request should include: (1) A concise summary of issues in dispute and decisions that need to be made; (2) agency position statements on each of the issues; (3) all supporting rationale and documentation for consideration; and (4) a brief chronology of key actions taken to resolve the dispute. Resolution should be pursued as quickly as possible. The National Issue Resolution Working Group decisions should be the final and binding resolution of disputes. Issue resolution working groups are encouraged to use the assistance of the local Interagency Technical Team in the resolution process.

Each stage of the issue resolution process should take no more than 15 days. Each agency should be prepared to make this process a priority so as to meet these time frames. If resolution cannot be achieved in a lower-level working group within these time frames, the consulting agencies may jointly or individually elevate the dispute to the next level. In the event that such an elevation is undertaken without the full consensus of the lower-level working group, all other lower-level group members should be notified prior to or simultaneously with the elevation.

### **Programmatic Consultation**

Once design criteria are developed, a programmatic section 7 consultation on the proposed implementation of these criteria can be completed in accordance with the guidance presented below. The goals of this guidance are:

1. To provide procedures for evaluating the potential effects of the action agencies' hazardous fuels treatment programs on listed and proposed resources. These procedures will guide implementation of the agencies' future treatment actions by establishing standards, guidelines, or governing criteria to which they must adhere;

2. To provide procedures for agencies to efficiently and effectively meet the requirement that each individual hazardous fuels treatment project receive the required individual review and complete the requirements of section 7 consultation; and
3. To provide procedures for ensuring that the environmental baseline is appropriately updated during implementation of consultation activities. Such updates should include changes resulting from natural fires or other unanticipated impacts.

To best streamline the section 7 consultation process, we suggest that programmatic consultation be completed using the “appended consultation” approach. This two-stage approach first involves the initial development of a programmatic biological opinion, or concurrence if no adverse effects are anticipated, that analyzes the potential effects of implementing the action agencies’ hazardous fuels treatment program at the conservation/management unit level. The second stage involves the development of appropriate project-specific documentation that addresses the specific effects of individual treatment projects proposed under these programs. Upon completion of the project-specific review, the associated documentation is appended to the programmatic biological opinion, or concurrence document. This programmatic document, together with the appended project-specific documentation, encompasses the complete consultation document for each individual project.

Under the programmatic consultation approach, if the land-management program may produce future hazardous fuels treatment actions that are likely to adversely affect listed species or designated critical habitat, the Services will produce a programmatic biological opinion that contains all of the elements found in a standard biological opinion and that specifically:

1. Describes the design criteria or standards of the proposed hazardous fuels treatment program, all of the types of future treatment actions that may result, and the treatment program limits regarding the distribution, extent, timing, etc., of these treatment projects, as identified by the action agency;
2. Evaluates the manner in which listed and proposed resources may be affected by individual hazardous fuels treatment projects implemented in accordance with the standards or requirements of the action agency’s program;
3. Evaluates the potential landscape-level impacts to listed species that may occur from implementation of individual treatment projects in accordance with the standards or requirements of the action agency’s hazardous fuels treatment program. Using information provided by the action agency regarding the standards of the agency’s treatment program, this evaluation must consider the full extent of impacts that may occur. For example, the agency’s hazardous fuels treatment program may limit the amount of treatment activity to a certain number of acres of impact per watershed per year. In the event that these limits are reached, activities conducted under the



programmatic consultation must end and a new consultation must be completed or the existing consultation must be reinitiated to ensure that the additional anticipated impacts will not result in jeopardy or adverse modification.

During the Services' analysis, the effects of all potential future fuels treatment actions that may be proposed under the programmatic consultation (i.e., under the standards of the action agency's design criteria) must be evaluated. For this reason it is essential that the action agencies and Services work together in pre-consultation to ensure that the agency's program contains sideboards that will provide the appropriate limits to potential future effects. If it is possible for an action to meet the standards of the program and result in certain effects, these potential effects must be analyzed.

To meet the requirements of section 7(a)(2), the effects analysis must show that when the program standards are applied to each project, the net additive effect of all projects will not likely result in jeopardy or adverse modification. The programmatic biological opinion will provide a section for tracking the additive effects of the individual projects as they are implemented. This section will quantify the impacts, including the amount or extent of incidental take, anticipated from implementation of the action agency's overall program. Due to the lack of specific information regarding future projects, it is likely that the Services will have to develop projections of the anticipated effects and level of take that may be expected given the standards, requirements, or criteria established by the action agency's fuels treatment program. This quantification should use the same categories of effects that will be analyzed in each project-specific review. This allows for the specific effects of future projects to be tallied and compared by effects category to the total expected and analyzed in the programmatic biological opinion.

4. Identifies procedures for completing consultation on future actions proposed under the program.
5. Identifies procedures for monitoring the implementation of future projects and associated impacts (i.e., environmental baseline tracking).
6. Provides an incidental take statement that will exempt the incidental take that is reasonably certain to occur as a result of individual actions implemented under the action agency's program as they are appended to the programmatic consultation. Note that the take exemption will only go into effect as each individual action is appended to the ITS of the programmatic consultation. Both the individual and additive effects of this take will have been analyzed in the effects analysis described above. Through these procedures the biological opinion will essentially create an ITS "vessel" that is filled by the individual projects (for additional information regarding incidental take and ITSs, see the "Incidental Take Statements" section below).

If it is determined that a specific fuels treatment program is not likely to adversely affect listed

and proposed resources, programmatic consultation requirements can be met with standard concurrence letter procedures. If this is the case, then as individual fuels treatment projects are proposed they may be reviewed and project-specific concurrence letters completed, as appropriate. For further guidance on streamlining this process, see the “Project Batching” section below.

### **Project-level Review and Consultation**

In accordance with 50 CFR 402.14(c), when using the appended programmatic consultation approach, the action agency should provide the following information for each individual hazardous fuels treatment project (or batches of projects): (1) a description of each proposed hazardous fuels treatment action and the specific areas to be affected; (2) identification of the listed and proposed resources that may be affected; (3) a description of the manner in which the proposed action may affect listed and proposed resources; (4) a description of the anticipated effects in terms of both the effects of each individual proposed hazardous fuels treatment project as well as how these fit within the scope of the overall effects anticipated in the programmatic consultation (at a minimum, this should include a tallying of the overall level of effects resulting from all activities appended to the programmatic biological opinion to date, including those resulting from the current project. The overall level of effects resulting from activities appended to the programmatic biological opinion to date can be obtained from the most recent project-specific documentation provided by the Services); (5) a finding that specifies, that the “anticipated effects from the proposed project are consistent with those anticipated in the programmatic biological opinion”; and (6) a description of additional effects, if any, not considered in the programmatic consultation (For a discussion of the information to provide regarding projects that are likely to adversely affect listed and proposed resources, see 50 CFR 402.14(c). At times it may be appropriate for the action agency to reference, or tier to, the informational document(s) provided to complete programmatic consultation). The above information typically can be drawn from existing information.

To initiate the project-specific consultation, the action agency’s project information and effects analysis should be submitted to the appropriate Service office(s). This initiation package should be accompanied by a cover letter that specifies that the action agency has determined that the proposed project is consistent with the programmatic biological opinion and reasonable and prudent measures and associated terms and conditions, if any, and requests that the proposed project be appended to the appropriate programmatic biological opinion to fulfill the agency’s consultation requirements. The Services will then review the information and effects analysis and document the results of this review in accordance with the guidance provided below. If it is determined that it is appropriate to append the proposed hazardous fuels treatment project(s) to the programmatic consultation, the Service will provide a letter to the action agency that contains:

1. A reference to the information used to develop the programmatic consultation and a summary of any additional information used to evaluate the effects of the proposed

action;

2. A short project summary. For example, “A 40 acres controlled burn within suitable foraging habitat will occur on units 3-6 of the Carbo watershed (township and range) of the Sadie Ranger District using [identified methods and procedures] within the time period of April 1 through May 31.”;
3. A detailed discussion of the effects of the proposed action on listed and proposed resources. This will entail a summary of the effects of the proposed action and incorporation by reference of the pertinent portions of the effects analysis from the programmatic biological opinion and any other relevant effects analyses conducted by the action agency. For example:

“the proposed hazardous fuels treatment action is anticipated to result in take of two individuals through disruption of foraging activities. [Provide a discussion of the specifics of the individuals to be impacted (e.g., past reproductive success if known, the role these individuals play in the species’ conservation, etc.).] For a complete description of the manner in which such disruptions of foraging activities impact this species, see the Controlled Burn subsection of the Effects section on page 7 of the September 28, 2000, programmatic biological opinion.”

Generally this section should specify what the proposed action will do to both the landscape and individuals of the species within the action area, but it can refer back to the programmatic biological opinion’s discussion of these types of impacts and present any additional information on how these impacts will affect species and habitat within this specific action area and how these specific effects will affect the species’ conservation. In general, the documentation presented in this step must be sufficient to show that the specific effects of the individual proposed action under review have been assessed;

4. A baseline tracking section that identifies the specific project’s impacts to the environmental baseline (including a restatement of the amount of take that is anticipated) and a tallying of the overall impacts to the environmental baseline from projects implemented under the programmatic consultation to date (including the impacts of the project(s) currently under review. As each individual project is appended to the programmatic consultation, the Services will evaluate the additive effect of all projects appended to date to ensure that the effects analysis contained within the programmatic consultation is still accurate and valid. In this manner the Services and action agencies can ensure that the effects anticipated and analyzed in the programmatic opinion are not exceeded during program implementation;

5. Additional project-specific RPMs, if any, needed to ensure the minimization of the impacts of the take that will result from the proposed project; and
6. Language that appends the project to the programmatic consultation and associated incidental take statement, if appropriate.

Although there is no standard, project-specific documentation for appending a single project to a programmatic biological opinion generally will require significantly less effort than completing an individual biological opinion. This documentation is then attached to the programmatic biological opinion in an appendix. Therefore, the programmatic biological opinion, together with the appended documentation, fulfills the consultation requirements for implementation of both program-level and project-level actions. Additional guidance on project-specific documentation will be forthcoming.

### **Project Batching**

While the appended programmatic consultation approach can streamline section 7 consultation, the process can be further streamlined by “batching” individual projects during the project-specific consultation process. Under this approach, the action agencies group, or batch, a series of similar proposed hazardous fuels treatment projects and the Services will produce a single review document that is appended to the programmatic consultation. As with the approach presented above, the design of each proposed treatment project will be sufficiently developed to accurately assess its potential effects and anticipated take, if any. Such analyses often will be completed by the action agency as part of the environmental review processes that it completes for all projects. Thus, effects of each proposed treatment project will be evaluated both individually and collectively within one document.

An example of the effectiveness of batching proposed treatment projects can be seen in a consultation completed by the Fish and Wildlife Service in 2001 for the Forest Service on National Fire Plan projects in the Southwest. This biological opinion covered 283 proposed Wildland Urban Interface projects encompassing 1.9 million acres of Forest Service land in Arizona and New Mexico that were to be implemented over a multi-year time period. The opinion analyzed the effects to more than 30 listed or proposed species from fuels reduction projects in areas that were at high risk for wildfire. In order to complete a batched consultation, the Forest Service provided site specific information about each project, such as the location, expected acres, general treatments that may be used, and vegetation type. The level of information provided by the Forest Service for each of the 283 projects was sufficient to allow the Service to assess the potential effects and anticipated take.

In addition to the batching of proposed hazardous fuels treatment projects to complete formal consultation, batching can also be an effective streamlining tool for the informal consultation process in cases where none of the proposed projects are likely to adversely affect listed and proposed resources. Under this scenario the action agency completes the same steps presented

above and the Services conclude consultation with a single concurrence letter. Under project batching action agencies may group, or batch, a series of similar proposed projects that may be implemented over a multi-year time period, and perhaps over a large geographic area, into one proposed action and request consultation. Or they may batch a broad range of activity types proposed within a limited geographic area, typically a watershed. The former approach is particularly effective in addressing projects whose effects are predictably similar and whose applicable mitigation and conservation measures are repetitive; the latter approach lends itself well to analysis demonstrating how a comprehensive suite of actions will lead to specific effects. In each case, the Services produce a single biological opinion, or in cases where all proposed projects are not likely to adversely affect listed and proposed resources, a single concurrence letter, to fulfill the action agency's consultation requirements. Again, the design of each project must be sufficiently developed to allow for the accurate assessment of its potential effects and anticipated take, if any. The effect of this is to combine several individual consultations into one document.

### **Incidental Take Statements**

In the event that it is determined that incidental take is reasonably certain to occur, an incidental take statement (ITS) is provided that exempts the action agency and their applicants, if any, from the Act's take prohibitions as long as the projects are implemented as described and comply with the statement's reasonable and prudent measures and the implementing terms and conditions. Each action that is likely to result in incidental take of listed species must have an ITS. In preparing an ITS, the Services are responsible for documenting the amount or extent of take anticipated, writing RPMs designed to minimize the impacts of the incidental take with implementing T&Cs that are clear, precise, and enforceable, and that include reporting requirements that assure timely compliance.

Incidental take statements for a programmatic biological opinion will be general in nature describing the manner in which take is anticipated and evaluating the maximum levels of take that may occur given the sideboards established by the action agency's design criteria. This maximum level of anticipated take is derived from information presented in the effects analysis conducted for the programmatic biological opinion. As individual hazardous fuels treatment projects are proposed and evaluated, they will be appended to the programmatic ITS as appropriate. This process is used because while the design criteria will be established at the time of programmatic consultation, the specifics of individual projects (e.g., precise locations, exact methods and procedures, etc.) will not. Thus, while it is possible to evaluate the estimated overall effects, including take, that may occur across the landscape from implementation of projects that meet the identified design criteria, it may not be possible to develop the appropriate RPMs and T&Cs to minimize the take that will occur with each proposed project because these are likely to be dependent on the attributes of the specific project, project area, and individuals of the listed species affected.

If appropriate, programmatic consultation ITSs contain RPMs and T&Cs that can be

implemented on a broad scale (i.e., the plan-level scale) and involve minor adjustments or additions to the design criteria; however, the goal is to eliminate the need for these types of adjustments through the pre-consultation coordination and cooperation process. Programmatic consultation ITSs may also contain a series of RPMs and T&Cs that may be pertinent to some projects, but not to others, with direction that the appropriate measures and conditions will be identified and applied during the project-level review. This will provide the action agencies with an idea of the measures that are likely to be required to minimize the impacts of the take associated with each individual hazardous fuels treatment project. As each hazardous fuels treatment project is reviewed, the Service will evaluate the need for each of the RPMs and T&Cs previously identified in the programmatic ITS, or for any additional RPMs and T&Cs necessary to minimize the impacts of the anticipated take. The project specific documentation should identify these measures in a format similar to that used in the ITS of the programmatic biological opinion so they can be clearly identified. Note that at times, no additional RPMs will be needed. In these cases, the Service's project-specific documentation should state that no RPMs and T&Cs are necessary beyond those contained in the programmatic incidental take statement.

While each programmatic biological opinion will contain an ITS, as appropriate, its take exemption will not take effect until each specific hazardous fuels treatment project is appended to it. To accomplish this, the project specific documentation for each appended project should specify that the take anticipated from implementation of the appended project is a subset of that anticipated in the programmatic incidental take statement. For example:

“Implementation of the proposed project is anticipated to result in disruption of the breeding activity of two individuals associated with 40 of the 500 acres of habitat anticipated to be treated under the [action agency's] hazardous fuels treatment program that was analyzed in the September 27<sup>th</sup>, 2002, programmatic consultation.”

As described earlier, in this way the programmatic ITS is essentially a “vessel” that is filled by the incidental take associated with the hazardous fuels treatment projects as they are appended. When sufficient projects have been appended to the programmatic consultation to account for all the incidental take anticipated by the programmatic ITS (i.e., when the “vessel” is full), no additional projects should be added without modification. Any new projects proposed to be appended to the programmatic document would require reinitiation of consultation to determine whether coverage is appropriate (Note that there are similar requirements for project effects; that is, when sufficient projects have been appended to the programmatic consultation to account for the effects anticipated by the programmatic biological opinion, activities must stop and consultation must be reinitiated and, if appropriate, the biological opinion must be updated before additional projects may be appended to it). For additional guidance regarding tracking the cumulative amount of incidental take exempted by the programmatic ITS, see item number (4) in the “Project-level Review and Consultation” section above.

### **Programmatic Consultation Monitoring and Review**

In addition to the monitoring associated with the reporting requirements contained in the ITS, a comprehensive review of how the programmatic consultation is working and whether its implementing procedures are being complied with should be conducted annually. During this review the environmental baseline should be reviewed and updated to account for unanticipated effects or the lack of anticipated effects. In addition, the additive effects that resulted from the individual hazardous fuels treatment projects should be evaluated to ensure that the programmatic consultation effects analysis was accurate. During this process it may be determined that the programmatic biological opinion is functioning as anticipated and, therefore, activities should continue, or that adjustments should be made. Although this comprehensive review should be conducted annually, programmatic consultation should be reinitiated if at any time during implementation of hazardous fuels treatment activities it is determined that: (1) the amount or extent of incidental take exempted by the programmatic biological opinion is exceeded; (2) new information reveals effects of the actions that may affect listed and proposed resources in a manner or to an extent not considered in the programmatic biological opinion; (3) the action agency's activities are subsequently modified in a manner that causes effects to listed and proposed resources that were not considered in the programmatic biological opinion; or (4) a new species is listed or critical habitat is designated that may be affected by the action.

### **Conclusion**

Implementation of the guidance contained in this memo will increase the efficiency and effectiveness of section 7 consultation on action agencies' hazardous fuels treatment projects. Although this guidance will assist in achieving this goal, close cooperation and coordination among agency personnel in the field will be essential to the success of this effort. In addition, all participating agencies should make sufficient resources available to ensure success.

cc: 3012-MIB-FWS/Directorate Reading File  
3012-MIB-FWS/CCU  
3242-MIB-FWS/AES Reading File (2)  
420-ARLSQ-FWS/OCHR-BCH (MHorton)  
420-ARLSQ-FWS/OCHR RF

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