

## Chapter 4

# Consultation and Coordination

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## 4.1 Agencies and Individuals Contacted

Reclamation has consulted with Federal, State, and local agencies during this NEPA process to gather input, provide information, and to meet NEPA and ESA regulatory requirements. This coordination was integrated with the public involvement process. Table 4.1-1 lists the EA public involvement contacts, and Table 4.1-2 summarizes the responses from the scoping process.

### 4.1.1 Endangered Species Act

Section 7 of the ESA requires Federal agencies that plan to initiate an action, which could affect an ESA-listed species or their critical habitat, to consult with the appropriate Federal regulatory agency. NMFS has regulatory responsibility for anadromous fish, and USFWS has regulatory responsibility for plants and terrestrial, avian, and resident aquatic animals. ESA-listed species are present in all four of the Mountain Snake Province subbasins. The USFWS recently published in the Federal Register proposed critical habitat for bull trout, with proposed designations occurring in each of the four subbasins.

In general, the Section 7 consultation process can consist of two parts: informal consultation and formal consultation. Informal consultation provides an opportunity for the Federal action agency to describe the project they intend to implement to the regulatory agencies. If the action agency determines that there is “no effect” to listed species or critical habitat, no further consultation is required. If there is agreement among the responsible agencies that the project “may affect – but is not likely to adversely affect” ESA-listed species or their critical habitats, the action agency can proceed with the project after receiving a “letter of concurrence” from the regulatory agencies, and informal consultation is concluded. Formal consultation is initiated by the action agency if it is determined that the project may adversely affect a listed species or their critical habitat. ESA requires Reclamation to confer with the appropriate regulatory agency if it is determined that the action may result in adverse modification of proposed critical habitat. Consideration of the proposed critical habitat for bull trout will be integrated into the consultation process with the USFWS.

RPA Action 149 of NMFS BiOp on the FCRPS specifies habitat improvement measures for Reclamation to initiate. These measures are designed to benefit anadromous fish and serve as off-site mitigation for the effects of the mainstem Columbia River dams. Overall and in the long-term, it is expected that implementation of Action 149 will benefit both anadromous and resident fish species. In the four identified subbasins, Action 149 will be comprised of many site-specific projects. ESA-required conferencing and informal consultation will ensure that all measures are taken to avoid adverse effects to listed species and critical habitat from site-specific project construction. However, there could be unavoidable short-term adverse effects associated with some site-specific projects.

Formal consultation with NMFS and USFWS will be initiated if it is determined that a proposed site-specific project may adversely affect a listed species or their critical habitat.

Informal consultation has provided, and will continue to provide, a means to develop a sound basis for formal consultation and still may be appropriate for many site-specific projects. Subsequent to the programmatic EA, a Biological Assessment will be prepared to evaluate the effects of a proposed action and determine whether listed species or their critical habitat are likely to be adversely affected.

Formal consultation is expected to consist of two parts. One part is expected to be a programmatic consultation; the other part is expected to be project specific consultation. The purpose of programmatic consultation is to obtain from the NMFS and USFWS a programmatic BiOp with Terms and Conditions that Reclamation will be obligated to follow to implement certain types of projects without further Section 7 consultation. To date, informal consultation between Reclamation and NMFS has identified three types of projects that qualify for programmatic consultation: off-stream screens in irrigation canals, screens on pumped diversions, and irrigation canal headgates. This programmatic EA will provide a large part of the information for developing a programmatic BA. NMFS and USFWS will use the programmatic BA to issue a joint programmatic BiOp that will include the specific terms and conditions for implementation of the types of projects identified in the BA.

The NMFS and USFWS have informed Reclamation that project specific consultation would be required when Reclamation funds implementation of in-stream projects, such as flow or barrier projects because, although flow and barrier projects are intended to have a long-term beneficial effect for ESA-listed anadromous and other species, there could be a short-term adverse effect in some projects associated with in-stream construction. Informal consultation may be adequate if there will be "no effect" to ESA-listed species. If a "no effect" opinion is not warranted for a particular flow or barrier project, Reclamation will prepare a BA and the NMFS and USFWS will respond with a biological opinion. For projects that require a BA, Reclamation will combine as many projects as possible in a single BA to expedite the formal consultation process.

As Reclamation, NMFS, and USFWS become more experienced with project specific consultation, additional types of projects may be considered and identified for programmatic consultation. The programmatic consultation could be amended to include these additional types of projects and any new terms and conditions. Reclamation then would be able to implement these additional types of projects without further Section 7 consultation. Prior to implementation of specific projects, coordination will occur with NMFS and USFWS.

Reclamation will complete ESA consultation with NMFS and USFWS before initiating any action that would result in irretrievable or irreversible commitment of resources. This includes consultation at both a programmatic level and for site-specific projects.

#### **4.1.2 National Historic Preservation Act**

Data has been collected from the Idaho SHPO to prepare the EA and to facilitate compliance with the National Historic Preservation Act and its implementing regulations (36 CFR 800). In addition, as part of Reclamation's government-to-government consultation with the tribes (described below), Reclamation has contacted appropriate Indian tribes to identify TCPs and Indian sacred sites. Coordination will occur with NMFS and USFWS.

dination with the Idaho SHPO and additional coordination with the Shoshone-Paiute Tribes, Shoshone-Bannock Tribes, Nez Perce Tribe, and the Burns-Paiute Tribe will continue.

### **4.1.3 Public Comment Summary**

The comment period for the Draft Programmatic EA for Implementation of Acton 149 was extended from November 22 through December 31, 2002. Comments were received from the USFWS, U.S. Forest Service, the Idaho Soil Conservation Commission, U.S. Army Corps of Engineers, Idaho State Historical Society, and the Nez Perce Tribe. Most of the agency comments dealt with minor inconsistencies or errors of factual information in the document and suggested revisions for the text or map data. The Idaho State Historical Society emphasized the need for surveys prior to ground-disturbing activity, noting that important archaeological resources may be present even in agricultural settings.

The USFWS provided some additional information regarding the occurrence of bull trout in the Little Salmon Subbasin. USFWS also expressed concern for the project's effects to wetlands that may be supported by leakage in existing irrigation conveyance systems. In addition, USFWS also requested greater detail on the potential effects to bull trout in order to develop a Biological Opinion regarding bull trout for this project. Consequently, Reclamation met with NMFS and USFWS to discuss endangered species issues. NMFS and the USFWS were particularly concerned with the potential effects of larger project implementation, such as the removal and replacement of push-up dams. NMFS did not provide written comments regarding the Draft EA.

Therefore, Reclamation will develop a separate programmatic Biological Assessment for review by NMFS and USFWS. Reclamation will continue to coordinate with NMFS and USFWS to resolve all endangered species issues prior to implementation of subbasin projects, which may include preparation of site-specific BAs as needed.

The Nez Perce Tribe comments requested more information regarding potential effects to fishing and hunting rights and to expand the analysis to an Environmental Impact Statement. All projects would be implemented on private land and would not affect Tribal fishing and hunting rights. The Tribe also suggested that Reclamation consult with them on the choice of subbasins for future project implementation and that Reclamation should expand its responsibilities outside the project constraints listed in the EA. For instance, the Tribe recommends that Reclamation address other subbasins in the region and issues that affect salmon and steelhead in addition to irrigated agriculture. Reclamation notes in the EA that NMFS has specified those subbasins under Reclamation responsibility and the corresponding constraints and that the choice of subbasins and project constraints is not at Reclamation's discretion. Comment and response letters can be found in Appendix H.

Table 4.1-1. Public Involvement Schedule for Selected Mountain Snake Province Subbasins.

	Lemhi	Upper Salmon	Middle Fork Clearwater	Little Salmon
<b>Scoping</b> 5/01 through 2/02	<p><b>State-wide</b> Meetings: IDFG, IDWR, IWUA, NPPC, Nature Conservancy</p> <p><u>Letters:</u> ~ 80 letters were mailed; see Appendix A for list.</p> <p><b>Local</b> <u>Meetings:</u> Advance Team USBWP Technical Advisory Committee</p>	<p><b>State-wide</b> Meetings: IDFG, IDWR, IWUA, NPPC, Nature Conservancy</p> <p><u>Letters:</u> ~ 80 letters were mailed; see Appendix A for list</p> <p><b>Local</b> <u>Meetings:</u> USBWP Technical Advisory Committee</p>	<p><b>State-wide</b> Meetings: IDFG, IDWR, IWUA, NPPC, Nature Conservancy</p> <p><u>Letters:</u> ~ 80 letters were mailed; see Appendix A for list</p> <p><b>Local</b> <u>Meeting:</u> (Prior to comment period) Meet with agencies &amp; entities of the Clearwater Focus Watershed Group to provide an overview of the BiOp program, introduce the programmatic EA, and encourage input and comments on the programmatic EA.</p>	<p><b>State-wide</b> Meetings: IDFG, IDWR, IWUA, NPPC, Nature Conservancy</p> <p><u>Letters:</u> ~ 80 letters were mailed; see Appendix A for list</p> <p><b>Local</b> <u>Meetings:</u> Local, State, and Federal agency staff</p> <p><u>Outreach:</u> (Prior to comment period) Introductory level meeting to familiarize the community with Reclamation. Public notice that DEA is available for review &amp; comment</p>
<b>Public Comment</b> 11/22/02 through 12/31/02	Public notice that DEA is available for review & comment	Public notice that DEA is available for review & comment	Public notice that DEA is available for review & comment	Public notice that DEA is available for review & comment

IDFG = Idaho Department of Fish and Game  
 IDWR = Idaho Department of Water Resources  
 IWUA = Idaho Water Users Association  
 NPPC = Northwest Power Planning Council  
 USBWP = Upper Salmon Basin Watershed Project

**Table 4.1-2. Scoping Response Summary.**

Name	Affiliation	Scoping Comments Received	Draft EA Requested
<b>Written Correspondence</b>			
Hal N. Anderson Administrator	IDWR	2/15/02 Would like to coordinate efforts with Reclamation on projects with similar goals. Emphasizes the importance of groundwater to surface water flows.	2/14/02
Ferrell Crossley Sarah Bigger Jude Trapani George Matejko	Adams SWCD Sen. Mike Crapo BLM USFS Salmon-Challis NF		2/14/02 2/12/02 2/19/02 2/19/02
M. Gene Gibson	IDWR Western Region	2/20/02 Need for Stream Channel Alteration permit for in-stream work.	
Janna Brimmer Vincent Pero Bruce Smith	NMFS Shoshone-Paiute Tribes Salmon-Challis NF		2/20/02 2/20/02 2/21/02
Steve Miller	The Nature Conservancy	3/1/02 Requested information on Action 149. Written comments would follow.	
J. Richard Ward	Salmon-Challis NF Leadore RD		3/2/02
Deb Mignogno	USFWS	3/7/02 Requested extension for comment submittal.	
Justin Hayes	Idaho Conservation League	3/8/02 Recommend that Reclamation's efforts include description of necessary flows, designation of minimum flows, streamside revegetation, include instream woody debris, fence livestock from riparian zones, limit ATV fording, and identify and remove fish barriers.	3/8/02
Craig A. Johnson Forest Supervisor	BLM USFS Payette NF		3/8/02 3/8/02

**Table 4.1-2. Scoping Response Summary.**

Name	Affiliation	Scoping Comments Received	Draft EA Requested
Scott Grunder	IDFG	3/12/02 Supports Reclamations efforts, offer to supply data on known fish barriers. Offered assistance in identifying barriers and other problems, and prioritizing projects.	3/12/02 Send to all IDFG on dist list + Bob Martin 3101 S Powerline Road Nampa, ID 83686
Alison Beck Haas	USFWS	3/12/02 Provides recommendations for meeting requirements of NEPA and ESA. Provides list of T&E species in study area.	
Dirk Kempthorne	Governor	3/12/02 Emphasizes the need to cooperate with State and local entities.	
Sarah McNary	BPA	3/19/02 Supports Reclamation's efforts to meet requirements of BiOp.	
<b>Meetings</b>			
Will Whelan, Director of Government Relations	The Nature Conservancy	1/18/02 Supports Reclamation's goals in program.	
Lou Lunte, Director of Conservation Programs	Idaho Water Users Association	1/31/02 Sees value in programmatic approach.	
Judi Danielson, Idaho NPPC Member	Northwest Power Planning Council	2/11/02 Sees value in programmatic approach.	
Hal N. Anderson, Administrator	IDWR	2/13/02 Informed Reclamation that IDWR was preparing written comments. Believed that Reclamation actions would complement IDWR activities. Emphasized need to consider impacts of surface and groundwater.	

## **4.2 Tribal Consultation and Coordination**

### **4.2.1 Government-to-Government Consultation with Tribes**

Reclamation sent letters to the tribes explaining the EA process during the scoping phase. In a follow-up correspondence, Reclamation requested information on TCPs and Indian sacred sites from the tribes for documentation during the EA process. To date, the tribes have not responded to this request. Letters to and meetings with Tribes are listed in Appendix G.

### **4.2.2 National Historic Preservation Act Tribal Consultation**

The National Historic Preservation Act (NHPA), of 1966, as amended through 1992, requires agencies to consult with Native American tribes if a proposed Federal action may affect properties to which they attach religious and cultural significance. The implementing regulations of the NHPA 36 CFR 800 addresses procedures for consultation in more detail.

### **4.2.3 Indian Trust Assets**

Reclamation coordinated with the Shoshone-Paiute, Shoshone-Bannock, Nez Perce, and Burns-Paiute Tribes to identify ITAs. It is not anticipated there will be any negative effects to ITAs that may exist in the subbasins. Indian Trust Assets are discussed in Section 3.12.

### **4.2.4 Other Laws and Regulations**

The relationship between Federal agencies and sovereign tribes is defined by several laws and regulations addressing the requirement of Federal agencies to notify or consult with Native American groups or otherwise consider their interests when planning and implementing Federal undertakings. Among these are the following:

- National Environmental Policy Act (1969)
- American Indian Religious Freedom Act (1978)
- Archeological Resources Protection Act (1979)
- Native American Graves Protection and Repatriation Act (1990)
- Executive Order 12875, Enhancing the Intergovernmental Partnership
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- Presidential Memorandum: Government-to-government Relations with Native American Tribal Governments
- Executive Order 13007, Indian Sacred Sites

- Executive Order 13175 (modifies 13084). Consultation and Coordination with Indian Tribal Governments.

### **4.3 Distribution**

This EA was distributed to private, State, Federal, and Tribal entities listed in Appendix G.