



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Washington, D.C. 20240

[PDF Version](#)

DIRECTOR'S ORDER NO. 194

Subject: Extension of the Redlegation of Authority for Intra-Service  
Endangered Species Act Section 7 Findings

**Sec. 1 What is the purpose of this Order?** This Order:

- a. Amends [032 FW 5](#), General Program Redelegations – Wildlife Resources.
- b. Describes responsibilities for making intra-Service Endangered Species Act (ESA) section 7 determinations (or findings) of effects for endangered, threatened, proposed, and candidate species and designated and proposed critical habitat. Intra-Service determinations reflect differing levels of effects that may result from implementing our own proposed Service actions on listed, proposed, and candidate species and designated and proposed critical habitat.
- c. Extends the redelegation of authority and responsibility for making these determinations from officers in the Endangered Species Program to officers within other Service programs.

**Sec. 2 What are the objectives of this Order?** The objectives of this Order are to:

- a. Streamline the ESA section 7 consultation and conferencing processes within the Service, and
- b. Increase strategic conservation when designing Service projects (or actions) that may affect listed, proposed, and candidate species, and designated and proposed critical habitat.

**Sec. 3 What is the scope of this Order?** This Order applies to all Service employees who undertake intra-Service consultation and conferencing subject to sections 7(a)(2) and 7(a)(4) of the ESA.

**Sec. 4 What is the legal authority for this Order?** The authority for this Order is the Endangered Species Act of 1973, as amended ([16 U.S.C. 1531](#), et seq.).

**Sec. 5 What are the effects determinations for ESA sections 7(a)(2) and 7(a)(4)?**

- a. **Section 7(a)(2) - Consultation**

(1) Section 7(a)(2) of the ESA requires that Federal agencies ensure that any action they authorize, fund, or carry out will not likely jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat.

(2) Using an informal consultation process, we determine the potential effects on listed species and/or their designated critical habitat by applying the following criteria:

(a) “no effect,” or

(b) “may affect.”

(3) If an action “may affect” a listed species or designated critical habitat, then we determine if it is:

(a) “not likely to adversely affect,” or

(b) “likely to adversely affect.”

(4) For proposed actions that are “not likely to adversely affect,” we provide written concurrence.

(5) For proposed actions that are “likely to adversely affect,” we conduct a formal consultation resulting in a Biological Opinion. The Biological Opinion contains an analysis of whether the proposed action is “not likely to jeopardize” or “likely to jeopardize” the continued existence of the listed species, as well as whether the action is “not likely to result in” or “likely to result in” the destruction or adverse modification of designated critical habitat.

#### **b. Section 7(a)(4) - Conference**

(1) Section 7(a)(4) of the ESA requires that Federal agencies confer on any action that is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of critical habitat proposed to be designated.

(2) Using an informal conference process, we determine the potential effects on proposed species or their critical habitat proposed for designation by applying the following criteria:

(a) “not likely to jeopardize the continued existence of the proposed species and/or not likely to result in the destruction or adverse modification of habitat proposed for designation;” or

(b) “likely to jeopardize the continued existence of the proposed species, and/or likely to result in the destruction or adverse modification of

habitat proposed for designation.”

(3) For proposed actions that are “not likely to jeopardize the continued existence of the proposed species, and/or not likely to result in the destruction or adverse modification of habitat proposed for designation,” the ESA does not require a Conference Opinion.

(4) For proposed actions that are “likely to jeopardize the continued existence of the proposed species and/or likely to result in the destruction or adverse modification of habitat proposed for designation,” we conduct conferencing that culminates in a Conference Opinion containing reasonable and prudent alternative(s).

### **Sec. 6 Who currently has the authority and responsibilities to make intra-Service ESA section 7 determinations?**

- a. The Director delegated authority and responsibilities for intra-Service ESA section 7 determinations to the Regional Directors.
- b. The Regional Directors further delegated the authority and responsibilities to the Assistant Regional Directors (032 FW 5.4B(3)).

### **Sec. 7 To whom are we extending this authority and responsibilities?**

- a. At the discretion of the Regional Directors, this Order extends the delegation of the authority and responsibilities to Project Leaders, Division and Branch Chiefs, and other Service program representatives shown in [Exhibit 1](#).
- b. This Order also extends the delegation of the authority and responsibilities to Headquarters Assistant Directors. Assistant Directors may extend the delegation of the authority and responsibilities to Division and Branch Chiefs as shown in [Exhibit 1](#).

**Sec. 8 How will the Service Endangered Species Program prepare other Service programs to conduct intra-Service ESA section 7 consultations and conferencing?** The Assistant Director – Endangered Species is responsible for:

- a. Working with other Service programs to provide initial training and develop guidance on their roles and responsibilities;
- b. Coordinating with the National Conservation Training Center (NCTC) about NCTC’s role in training other Service programs in their new roles and responsibilities; and
- c. Initially assisting other Service programs in acquiring the skills to conduct intra-Service ESA section 7 consultation and conferencing, including making

determinations of effects.

**Sec. 9 Is the authority for national level intra-Service ESA section 7 consultations and conferencing delegated to other programs?** Yes. However, the Assistant Director – Endangered Species retains signature authority for formal consultations and conferencing that we determine are **inter-Agency** national consultations and conferences (see 032 FW 5.4A(2)).

**Sec. 10 When is this Order effective?** This Order is effective immediately. It remains in effect until we incorporate it into Part 32 of the Service Manual or until we amend, supersede, or revoke it, whichever comes first. If we do not incorporate it into the Service Manual, amend, supersede, or revoke it, the Order will expire 18 months from the date of signature.

/sgd/ Kenneth Stansell  
DEPUTY DIRECTOR

Date: April 17, 2008

---

*For specific information on the content of this Director's Order, contact the Branch of Consultation and Habitat Conservation Planning. For more information about the Web site, contact [Krista Holloway](#) in the Division of Policy and Directives Management.*

---

[Directives Home](#)

PDM Web sites: [Centralized Library of Servicewide Policies](#) | [FWS Forms](#) | [PDM Services](#)

[Privacy, Disclaimer and Copyright Information](#) | [Information Quality Act](#)

[U.S. Fish and Wildlife Service Home Page](#) | [Department of the Interior](#) | [USA.gov](#) | [About the U.S. Fish and Wildlife Service](#) | [Accessibility](#) | [Privacy](#) | [Notices](#) | [Disclaimer](#) | [FOIA](#)