

UPDATED GUIDANCE FOR IMPLEMENTATION OF THE SIKES ACT IMPROVEMENT ACT

Coordination Requirements of the Sikes Act

The scope of Fish and Wildlife Service (FWS) and State involvement in developing integrated natural resources management plans (INRMPs); Defining "mutual agreement" with the FWS and the appropriate State fish and wildlife agency; Coordinating INRMPs with other planning statutes

Legislative Language

Section 101(a)(2) of the Sikes Act states that the INRMP shall reflect the "mutual agreement" of the FWS and State "concerning conservation, protection, and management of fish and wildlife resources."

The Conference Report (H.Rpt. 105-340) accompanying the National Defense Authorization Act for Fiscal Year 1998 states that "The conferees agree that reauthorization of the Sikes Act is not intended to expand the management authority of the U.S. Fish and Wildlife Service or the State fish and wildlife agencies in relation to military lands."

Section 101(a)(4)(ii) of the Sikes Act states that nothing in this law "enlarges or diminishes the responsibility and authority of any State for the protection and management of fish and resident wildlife."

Section 101(a)(2) of the Sikes Act requires that the Secretary of a Military Department shall prepare each INRMP for which the Secretary is responsible "in cooperation with" the FWS and each appropriate State fish and wildlife agency.

DoD Policy

This document provides updated guidance for implementing Sikes Act Improvement Act (SAIA) requirements consistently throughout the Department of Defense. It replaces implementing guidance dated September 21, 1998, same subject. It is issued under authority of Department of Defense Directive 4715.1, "Environmental Security" (February 24, 1996) and Department of Defense Instruction 4715.3, "Environmental Conservation Program" (May 3, 1996).

The "old" Sikes Act §101(a) (1) "authorized," but did not require, the Secretary of Defense to develop cooperative plans "mutually agreed upon" by the three parties.

The new SAIA "requires" the Secretaries of the Military Departments to prepare INRMPs in cooperation with the other two parties, and require the plans to reflect "mutual agreement of the parties concerning the conservation, protection, and management of fish and wildlife resources." The new §101(a) language achieves four important objectives:

1. INRMPs -- comprehensive plans for the management of all installation natural resources (substantially expanded beyond the scope of fish and wildlife cooperative plans) --are now mandatory "unless the Secretary determines that the absence of significant natural resources on a particular installation makes preparation of such a plan inappropriate."

2. INRMPs shall be prepared to assist installation commanders in their efforts to conserve and rehabilitate natural resources "[c]onsistent with the use of military installations to ensure the preparedness of the Armed Forces." INRMPs are intended principally to help installation commanders manage natural resources more effectively so as to ensure that installation lands remain available and in

good condition to support the installation's military mission (i.e., ensure "no net loss in the capability of military installation lands to support the military mission of the installation").

3. INRMPs are to be prepared "in cooperation with" the FWS and appropriate State fish and wildlife agencies. It is expected that the entire INRMP will be developed in cooperation with these agencies -- not just those portions of the INRMP that specifically address fish and wildlife conservation and management. This cooperation begins at the development stage of the INRMP and extends through preparation and coordination to completion.

4. Mutual agreement should be the goal with respect to the entire plan. However, mutual agreement is required only with respect to those elements of the plan that are subject to the otherwise applicable legal authority (i.e., authority derived from a source other than the Sikes Act, such as the Endangered Species Act) of the FWS and State fish and wildlife agencies to conserve, protect, and manage fish and wildlife resources. Nothing in the SAIA is intended to either enlarge or diminish the existing responsibility and authority of the FWS or State fish and wildlife agencies concerning natural resources management on military lands. Although it is not expected to occur often, where the FWS or a State fish and wildlife agency withholds its agreement with an INRMP based on objections to elements of the INRMP clearly not within the scope of the particular agency's authority, an installation may, notwithstanding the objections, finalize the INRMP and proceed to manage its natural resources in accordance with the terms of the plan.

The Department of Defense is satisfied that the revised Sikes Act will enable the Military Departments to take advantage of the FWS and State fish and wildlife agencies expertise in preparing meaningful and useful INRMPs that are consistent with the use of military installations.

Soliciting public comments

Legislative Language

Section 2905(d) (1) of the SAIA requires each military department to provide "an opportunity for the submission of public comments" for new INRMPs and on changes to certain existing cooperative plans. In addition, as a matter of policy, DoD intends to invite public comment on all new plans and plan amendments.

DoD Policy

The National Environmental Policy Act (NEPA) process may be used to meet DoD's INRMP public review requirements and to document the decision to adopt formally an INRMP. The NEPA process, however, will satisfy SAIA public comment requirements only if the public is provided a meaningful opportunity to comment upon the draft INRMP as part of the NEPA process. Absent some extraordinary circumstance, the public should be afforded a minimum of 30 days to review and comment upon a draft INRMP, whether as part of the NEPA process or through some other process.

Each installation shall afford the appropriate State and FWS offices the opportunity to review all public comments received on its INRMP. This will inform these offices of potential issues sufficiently early in the review process to permit appropriate consideration during the overall review of the INRMP

Specific coordination requirements

DoD Policy

Each DoD installation shall establish and maintain regular communications with the appropriate FWS and State fish and wildlife agency offices to address issues concerning natural resources management that are not addressed in the INRMP. At a minimum, this shall include annual coordination with all cooperating offices.

Each DoD installation shall invite the FWS and State fish and wildlife agency to participate cooperatively in the scoping, design, and preparation of the INRMP. This will serve to inform these offices about the DoD mission; invite them to consider solutions to difficult resource management problems; and expedite final INRMP coordination.

Each DoD installation shall advise all appropriate internal and external stakeholders of the intent to prepare or revise an INRMP within 30 days of starting such an action. When providing this notification to FWS and State fish and wildlife agencies, each DoD installation shall concurrently request the FWS and State fish and wildlife agencies to participate in the development or revision of the INRMP.

Each DoD installation shall notify appropriate FWS and State fish and wildlife offices of its intent to provide a draft INRMP for review and coordination at least 60 days prior to delivering such document.

For the FWS, the appropriate office for initial contact by installations, for development and review of INRMPs, will be a field office. Pursuant to current FWS Sikes Act Guidance, a field office must review the INRMP and provide preliminary agreement concerning the conservation, protection and management of fish and wildlife resources detailed in the INRMP prior to review in the regional office and final action by a Regional Director. (A list of current FWS Regional Sikes Act Coordinators is attached). If an installation needs assistance in contacting a field office to work with, they may contact the FWS Regional Coordinator for further information.

The following process shall be used to facilitate coordination within and between the various organizations and to ensure adequate documentation of the coordination process.

- Each DoD installation shall send an initial draft INRMP to the FWS field office and State fish and wildlife agency office for review and comment. A copy of the forwarding letter shall be sent to the Sikes Act Coordinator at the FWS regional office to inform them that the review process has begun .
- Each installation shall request written acknowledgement of receipt of the draft INRMP within 15 days of receipt.
- The FWS field office will provide written comments to the installation, and furnish copies of the letter to the Sikes Act Coordinator at the FWS regional office, and to the State fish and wildlife agency director's office.
- The State fish and wildlife office will provide written comments to the installation, and furnish copies of the letter to the Sikes Act Coordinator at the FWS regional office.
- The installation shall consider all comments received and send a final draft of the INRMP to the FWS regional office and the State director's office with a letter documenting the actions taken on the draft comments. The installation shall furnish a copy of the letter to the FWS field office.
- Each installation should request that the FWS and the State director provide consolidated written comments from all appropriate offices and divisions within 60 days of receipt of the final draft INRMP, unless the participants mutually agree upon a longer review period because an installation has a particularly large or complex INRMP.

The following special situations are exceptions to this timeline. In these cases, the DoD installation shall request the FWS regional office and field office to notify the installation of the appropriate review timeline within 15 days of receipt of the draft INRMP:

- If formal section 7 consultation is required, the time frames for that process will apply.
- If the installation is requesting that the INRMP substitute for designation of critical habitat on the installation.
- The FWS may choose to comment separately from an INRMP review response on these issues.

Except for the special situations described above, if after a period of 120 days no final comments are received from the appropriate State and FWS offices, an installation may request expedited review of its INRMP. The installation should submit a written request to designated Headquarters representatives of the DoD and FWS, and to the director of the appropriate State fish and wildlife agency. Representatives from these offices will meet within 30 days of receipt of such a request to resolve any outstanding coordination issues.

“Mutual agreement” with respect to those elements of the INRMP concerning the conservation, protection, and management of fish and wildlife resources shall be presumed only upon receipt of written concurrence on those elements of the INRMP from:

- For the FWS, the Regional Director. (Exception: The Manager of the California/Nevada Operations office will coordinate on INRMPs for installations in California and Nevada).
- For the appropriate State fish and wildlife agency, the Director.
- For DoD, the installation commander.

FWS Policy

Current FWS policy is described in its 8 June 2001 memo, “Guidance for Coordination on DoD Sikes Act INRMPs.” This memo is available electronically at <http://www.fws.gov/r9dhcbfa/sikes.pdf>.

Integrating other plans, programs, and policies

DoD Policy

INRMPs shall be prepared in coordination with installation master plans, range plans, training plans, Integrated Cultural Resources Management Plans (ICRMPs), pest management plans, installation restoration plans that address contaminants covered by CERCLA and related provisions, and other appropriate plans and offices. It is not intended that INRMPs will function as a comprehensive compilation of detailed information on all these related topics. Rather, the INRMP should briefly summarize the key interrelationships with these plans, reference where the plans may be obtained, and describe where detailed information can be found.

Availability of INRMPs

DoD Policy

Unclassified portions of all final INRMPs shall be available electronically via the World Wide Web, CD-ROM, or other similar means. Draft INRMPs may also be made available electronically to expedite review and comments. All such documents should undergo appropriate security review prior to being made available.

DoD installations shall ensure that any such security review consider the security of locational information on natural and cultural resources that may be subject to pilfering or vandalism , as well as military security.

Reporting Requirements of the Sikes Act

Defining which installations require INRMPs

Legislative Language

Section 2905 of the SAIA required the Secretary of each Military Department by August 18, 1998, to review each military installation in the United States under his or her jurisdiction to determine which military installations require INRMPs.

Section 101(a)(1)(B) of the Sikes Act authorizes the Secretary of each Military Department to identify installations for which an INRMP is not needed if “the Secretary determines that the absence of significant natural resources on a particular installation makes preparation of such a plan inappropriate.”

DoD Policy

Installation size (acreage) should not be used as the sole determining factor in deciding whether or not an installation requires an INRMP. The specific nature of an installation (e.g., a fully built-up area) or the negative findings of a biological survey may be adequate reasons to justify not preparing an INRMP if they can adequately demonstrate the absence of “significant” natural resources.

An installation will normally require an INRMP if it undertakes more than one of the following activities: fish and wildlife management; threatened and endangered species management; hunting and fishing management; land management; forest management; natural resources-based outdoor recreation; on-the-ground military mission operations.

All DoD Components with land management responsibilities are subject to the requirements of this and all other sections of the SAIA, and shall develop policies for the criteria that determine INRMP requirements.

Each DoD Component shall provide a written explanation of any changes to the November 18, 2001, list of DoD installations requiring INRMPs as a part of the next scheduled conservation In Progress Review (IPR).

Reporting deadlines and formats for report to Congress on installations which require INRMPs

Legislative Language

Section 101(f)(1) of the Sikes Act requires that by March 1, 1999, and by each March 1 thereafter, the Secretary of Defense shall submit a report which includes the number of INRMPs in effect, the amounts expended on conservation activities pursuant to these plans, and an assessment of the extent to which the plans comply with the Sikes Act.

DoD Policy

The new conservation measures of merit described immediately below shall be reported in the annual Environmental Quality Report to Congress. These metrics are intended to meet the INRMP tracking requirements established by the SAIA.

New Conservation Metrics for Preparing and Implementing INRMPs

DoD Policy

The following elements are established as formal measures of merit for the conservation program. Progress toward meeting these measures of merit shall be reported at each conservation IPR, and in the annual Environmental Quality Report to Congress, effective for FY 2003. Specifically, for each installation with significant natural resources, report:

- . The installation name and state.
- . The year the most recent INRMP was completed or revised.
- . Date planned for the next revision.*
- . Was the INRMP coordinated with appropriate military trainers and operators?
- . Were projects added to the INRMP as a result of comments from military trainers and operators?
- . Were segments of the INRMP concerning the conservation, protection and management of fish and wildlife resources agreed to by the U.S. Fish and Wildlife Service (FWS) Regional Director? (FWS coordination)
- . Were projects added to the INRMP as a result of FWS comments?
- . Has annual feedback been requested from the FWS?
- . Has annual feedback been received from the FWS?
- . Were segments of the INRMP concerning the conservation, protection and management of fish and wildlife resources agreed to by the State fish and wildlife agency Director? (State coordination)
- . Were projects added to the INRMP as a result of State comments?
- . Has annual feedback been requested from the State fish and wildlife agency?
- . Has annual feedback been received from the State fish and wildlife agency?
- . Does the INRMP contain a list of projects necessary to meet plan goals and objectives, as well as timeframes for implementation of any such projects?
- . \$ spent in reporting FY to implement the INRMP.
 - o \$ spent on Class 0 and 1 requirements.
 - o \$ spent on Class 2 and 3 projects.
- . \$ requirements for unfunded Class 0 and 1 projects.
- . # of Class 0 and 1 projects required.
- . # of Class 0 and 1 projects unfunded.
- . List of unfunded Class 0 and 1 projects >\$50K.
- . # of Class 2 and 3 projects funded.
- . Did the installation seek public comment on the draft INRMP?
- . Were projects added to the INRMP as a result of public comments?

The attached Excel spreadsheet shall be used to report this information.

*NOTE: To facilitate future review and more evenly distribute the workload for FWS and the State fish and wildlife agencies, the Military Services shall endeavor to stagger the dates that future INRMP reviews and revisions are to be completed, especially with respect to those INRMPs that are likely to require substantial revision.

Implementation Requirements associated with the Sikes Act

Identifying and Budgeting for INRMP projects

DoD Policy

“Must fund” conservation requirements are those projects and activities that are required to meet recurring natural and cultural resources conservation management requirements or current compliance needs.

Detailed definitions for Class 0, 1, 2, and 3 projects are located in Enclosure 4 to DoD Instruction 4715.3, “Environmental Conservation Program,” May 3, 1996. These categories are descriptively summarized as:

- Class 0: Recurring Natural and Cultural Resources Conservation Management Requirements
 - Class 0 shall contain any INRMP actions necessary to rehabilitate or prevent resource degradation that may affect military readiness.
- Class 1: Current Compliance
 - Class 1 shall contain requirements to manage species and habitats of concern to prevent listing of species that could affect military readiness.
- Class 2: Maintenance Requirements
- Class 3: Enhancement Actions beyond Compliance
- “Must fund” projects and actions include those required to:
 - Meet the FWS special management criteria for threatened and endangered species management
 - Provide for qualified NR personnel
 - Prevent resource loss or degradation (e.g., soil loss, other maintenance activities) that may effect military readiness

Not all projects listed in an INRMP are necessarily “must funds.” INRMPs should include valid Class 2 and 3 projects and actions that would enhance an installation’s natural resources.

Defining Implementation

“Implementation” anticipates the execution of all “must fund” projects and activities in accordance with specific timeframes identified in the INRMP.

An INRMP is considered to be implemented if an installation:

- Actively requests, receives, and uses funds for “must fund” projects and activities;
- Ensures that sufficient numbers of professionally trained natural resources management personnel are available to perform the tasks required by the INRMP;
- Coordinates annually with all cooperating offices; and
- Documents specific INRMP action accomplishments undertaken each year.

Each installation shall invite annual feedback from the appropriate FWS and State fish and wildlife agency offices on the effectiveness of the INRMP. The form letter in the INRMP Handbook (see below) may be used to request this feedback.

Installations shall inform the FWS and State fish and wildlife agency which INRMP projects are, or will be, “must fund.” This information need not be contained in the INRMP, but may be provided after review and validation of the classes and estimated costs of the requirements.

INRMPs as a Substitute for Critical Habitat Designation

FWS Policy

According to FWS policy, if adequate special management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species, habitat identified as essential to the protection and recovery of a species may be omitted from federal critical habitat designation.

An installation may have its INRMP serve as “adequate special management”—and obviate the need for critical habitat designation-- if the INRMP addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species.

Special management criteria

Special management or protection is a term that stems from the definition of *occupied* critical habitat in section 3 of the ESA. For occupied habitat, one first determines whether the area contains the physical and biological features essential to the conservation of the species and, in addition, whether this area has or needs special management or protection.

Additional special management is not required if adequate management or protection is already in place. If *unoccupied* areas are determined to be essential to the conservation of the species, such unoccupied areas should be included only where special management or protection is required.

The FWS uses the following three criteria to determine if an INRMP provides adequate special management or protection:

- 1. The plan provides a conservation benefit to the species.** The cumulative benefits of the management activities identified in a management plan, for the length of the plan, must maintain or provide for an increase in a species' population, or the enhancement or restoration of its habitat within the area covered by the plan [i.e., those areas deemed essential to the conservation of the species]. A conservation benefit may result from reducing fragmentation of habitat, maintaining or increasing populations, insuring against catastrophic events, enhancing and restoring habitats, buffering protected areas, or testing and implementing new conservation strategies.
- 2. The plan provides certainty that the management plan will be implemented.** Persons charged with plan implementation are capable of accomplishing the objectives of the management plan and have adequate funding for the management plan. They have the authority to implement the plan and have obtained all the necessary authorizations or approvals. An implementation schedule (including completion dates) for the conservation effort is provided in the plan.
- 3. The plan provides certainty that the conservation effort will be effective.** The following criteria will be considered when determining the effectiveness of the conservation effort. The plan includes (1) biological goals (broad guiding principles for the program) and objectives (measurable targets for achieving the goals); (2) quantifiable, scientifically valid parameters that will demonstrate achievement of objectives, and standards for these parameters by which progress will be measured, are identified; (3) provisions for monitoring and, where appropriate, adaptive management; (4) provisions for reporting progress on implementation (based on compliance with the implementation schedule) and effectiveness (based on evaluation of quantifiable parameters) of the conservation effort are provided; and (5) a duration sufficient to implement the plan and achieve the benefits of its goals and objectives.

The INRMP Handbook

DoD Policy

Resources for Integrated Natural Resources Management Plan (INRMP) Implementation: A Handbook for the Natural Resources Manager provides practical implementation guidelines for the DoD natural resources manager. It is available electronically at <https://www.denix.osd.mil/inrmp>

Miscellaneous Requirements of the Sikes Act

When and how to prepare and revise INRMPs

Legislative Language

Section 101(a)(1)(B) of the Sikes Act requires the Secretary of each Military Department to “prepare and implement an INRMP for each military installation in the United States . . . unless the Secretary determines that the absence of significant natural resources on a particular installation makes preparation of such a plan inappropriate.

Section 2905(c) of the SAIA requires the Secretary of each Military Department to prepare and begin implementing INRMPs for those installations where an INRMP is appropriate by November 18, 2001.

Section 2905(c) also states that in the case of any installation for which there was in effect a cooperative plan under section 101(a) of the Sikes Act as of November 17, 1997, the Secretary of each Military Department may “complete negotiations with the Secretary of the Interior and the heads of the appropriate State agencies regarding changes to the plan that are necessary for the plan to constitute an INRMP.”

H.Rpt. 105-340 states that “The conferees intend that the plans that meet the criteria established under this provision should not be subject to renegotiation and reaccomplishment.”

Section 101(b)(2) of the Sikes Act requires that each plan be reviewed “on a regular basis, but not less often than every five years.”

DoD Policy

All installations that require INRMPs must complete and begin execution of new SAIA-compliant INRMPs by November 18, 2002.

All INRMPs shall be reviewed annually by the DoD installation with the cooperation of the FWS and State fish and wildlife agency. Annual reviews shall verify that:

- Current information on all conservation metrics is available.
- All “must fund” projects and activities have been budgeted for and implementation is on schedule.
- All required trained natural resources positions are filled or are in the process of being filled.
- Projects and activities for the upcoming year have been identified and included in the INRMP. An updated project list does not necessitate revising the INRMP.
- All required coordinations have occurred.
- All significant changes to the installation’s mission requirements or its natural resources have been identified.

All INRMPs shall be revised, if necessary, at intervals of not more than five years, and more frequently if warranted by significant changes to the installation’s mission requirements or its natural resources.

How to accommodate public access

Legislative Language

Section 101(b)(1)(G) of the Sikes Act states that each INRMP shall provide, to the extent appropriate and applicable, for public access to military installations that is necessary or appropriate for the “sustainable

use by the public of natural resources to the extent that the use is not inconsistent with the needs of fish and wildlife resources” and “subject to requirements necessary to ensure safety and military security.”

DoD Policy

Policies articulated in DoD Instruction 4715.3 apply. This document states, in part, that:

- “The principal purpose of DoD lands and waters is to support mission-related activities. Those lands and waters shall be made available to the public for educational or recreational use of natural and cultural resources when such access is compatible with military mission activities, ecosystem sustainability, and with other considerations such as security, safety, and fiscal soundness. Opportunities for such access shall be equitably and impartially allocated. INRMPs and integrated cultural resource management plans shall describe areas appropriate for public access.”
- American Indians shall have reasonable access to DoD sites and resources that are of religious importance, or that are important to the continuance of their cultures, or where treaties allow.

How to address the no net loss capability of military lands to support mission requirements.

Legislative Language

Section 101(b)(1)(I) of the Sikes Act states that each INRMP shall, to the extent appropriate and applicable, and consistent with the use of the installation to ensure the preparedness of the Armed Forces, provide for “no net loss in the capability of military installation lands to support the military mission of the installation.”

DoD Policy

Appropriate management objectives to protect mission capabilities of installation lands (from which annual projects are developed) should be clearly articulated in the planning process and should be high in INRMP resourcing priorities. The effectiveness of the INRMP in preventing “net loss” shall be evaluated annually. Mission requirements and priorities identified in the INRMP shall, where applicable, be integrated in other environmental programs and policies. It is not the intent that natural resources are to be consumed by mission requirements, but sustained for the use of mission requirements. In order to achieve this, environmental programs and policies must have the goal of preserving the environment for the purpose of the mission.

There may be, however, instances in which a “net loss” may be unavoidable in order to fulfill regulatory requirements other than the Sikes Act, such as complying with a biological opinion under the provisions of the Endangered Species Act or the protection of wetlands under the provisions of the Clean Water Act. Loss of mission capability in these instances will be identified in the INRMP and a discussion included of measures being undertaken to recapture the net loss.

When to prepare INRMPs for Closed or Closing Bases

Legislative Language

Section 101(1)(C) of the Sikes Act defines a “military installation” so that closed or closing bases under the Defense Base Closure and Realignment Act of 1990, as amended (Public Law 101-510) are not included.

DoD Policy

INRMPs as defined by the SAIA are not required for closed and closing bases. However, many closing installations should retain existing plans in place to cover appropriate natural resource management issues that will require ongoing active management during the closure process. These plans need not be revised during the closure process. Each Military Service shall provide a separate annual list of their installations that require this level of management.

Funds Authorization for 18 months for the Cost of Goods and Services provided under a Cooperative Agreement

Legislative Language

Section 103a(b) of the Sikes Act states that funds appropriated to DoD for a particular fiscal year may be obligated to cover the cost of goods and services provided under a cooperative agreement during any 18-month period beginning in that fiscal year.

DoD Policy

This authorization facilitates the execution of seasonal conservation projects that are funded through cooperative agreements. The terms of Section 103a authorize the obligation of current fiscal year funds under the provisions of a cooperative agreement for the period of 18 months from the date that the cooperative agreement is executed. DoD Components should develop policies that delegate cooperative agreement authority to the installation level and convey the authority to obligate funds beyond the current fiscal year.

Authorizing Cooperative Agreements for Land Management on DoD Lands

Legislative Language

Section 103a(a) of the Sikes Act states that the Secretary of a military department may enter into cooperative agreements with State and local governments, nongovernmental organizations, and individuals to provide for the maintenance and improvement of natural resources on or to benefit natural and historical research on military installations.

DoD Policy

This authorization is intended to facilitate the acquisition of ecological services on military installations, to include monitoring and the transfer of funds for services provided.