

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240

In Reply Refer To:
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APR 17 2002

Memorandum

To: Regional Directors, Region 1, 2, 3, 4, 5, 6, and 7
Manager, California - Nevada Operations Office

Deputy

From. Director /s/**Marshall R Jones**

Subject: Endangered Species Act Consultation Compliance with "Responsible Entities"
under U. S. Department of Housing and Urban Development's Assumption
Authority (24 CFR Part 58)

The purpose of this memorandum is to clarify Service policy regarding consultation under section 7 of the Endangered Species Act for certain projects authorized by the Department of Housing and Urban Development- Under 12 HUD Programs, States, Indian Tribes, units of general local government and certain insular areas (Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, and Palau) are required to assume, or in some cases may choose to assume, the environmental compliance responsibilities that would otherwise be the responsibility of HUD- Nine of the programs for which these "responsible entities" may assume responsibilities are described in regulations found at 24 CFR Part 58. The three additional programs that by more recently-enacted statutory provisions are subject to the environmental provisions in Part 58 are: (1) assistance under the Native American Housing assistance and Self-Determination Act of 1996, (2) loan guarantees for Indian housing under Section 184 of the Housing and Community Development Act of 1992, and (3) Housing Opportunities for Persons with AIDS grants under the AIDS Housing Opportunity Act. The regulations specifically mention that section 7 of the Endangered Species Act is one of the laws for which responsible entities may assume responsibility for compliance.

According to HUD regulations and statutes, when eligible general government applicants apply for and accept HUD money under 24 CFR Part 58 programs, they agree to become the "responsible entity-" These local governments are directly responsible for ensuring compliance with those Federal environmental laws described in the regulation, and as such, they constitute the "Federal agency" responsible for consulting with the Service under section 7 of the Endangered Species Act. However, Indian Tribes under NAHASDA and Section 184 have the option of agreeing to be the "responsible entity" or having HUD retain environmental responsibility. The unit of general local government is requested to be the "responsible entity" in instances when the applicant is not a governmental entity.

Service offices should regard all requests for section 7 consultation from "responsible entities" as official requests submitted by a Federal action agency as defined under the interagency consultation regulations at 50 CFR part 402. Both HUD and the local government entity will submit certification letters to the Field Office with the request for section 7 consultation (see attachment) to reaffirm the status of the local government entity as the 'responsible entity' under part 58. In addition, any questions about who the responsible entities are for a particular geographic area should be directed to the appropriate Community Planning and Development Director. A list of HUD regional/state contacts and a list of CPD Directors are attached.

According to HUD's regulations (24 CFR 58.5) and statutes, the "responsible entity's" assumption of responsibility for compliance with the Endangered Species Act, "particularly Section 7," includes both substantive as well as procedural compliance with section 7. Part 58 and the assumption provisions in HUD's statutes make the responsible entity the responsible Federal official at the project level for each project for which a Request for Release of Funds and certification is submitted and approved. For any activity that may require compliance with the Endangered Species Act or any of the other listed Federal environmental compliance provisions, "responsible entities" must give public notice and submit a request for release of funds to HUD along with a certification that they have fully carried out the environmental responsibilities they have assumed, and that they agree to Federal court jurisdiction for enforcement of these responsibilities. The Service should be notified by the "responsible entity" that a request for release of funds has been submitted to HUD for any action that was reviewed for section 7 compliance.

If a Federal agency makes a finding that the project is unsatisfactory from the standpoint of environmental quality, HUD may determine not to release any funds for the project or exercise other corrective measures. In the event that a "responsible entity" fails to follow the procedural and substantive requirements of section 7, the Service should notify HUD that the responsible entity has not satisfied the requirements of the Endangered Species Act. In particular, if the Service makes a jeopardy or adverse modification determination, a copy of the biological opinion should be provided to the appropriate CPD Director with a request for HUD not to release the funds without first coordinating with the Services (see attachment no. 4). In addition, if the responsible entity is not cooperative in implementing the Reasonable and Prudent Measures or the project is modified from that described in the biological opinion, it may be necessary to work with the appropriate CPD Director as HUD has continuing monitoring responsibilities.

Please direct any questions concerning this matter to Renne Lohofener, Chief, Division of Consultation, Habitat Conservation Planning, Recovery, and State Grants at (703) 358-2171.

Attachments

[CPD Director]
Field Housing and Urban Development Office

Re: Notification of Jeopardy/Adverse Modification determination by the Service on [project]

Dear [CPD Director]:

The U.S. Fish and Wildlife Service/National Marine Fisheries Service has determined that implementation of the proposed [project] by [responsible entity] will likely jeopardize the continued existence of [one or more species] and/or result in destruction or adverse modification of critical habitat. We have provided [responsible entity] the following reasonable and prudent alternatives:[list]. Because the biological opinion has found [jeopardy/destruction or adverse modification of critical habitat] the responsible entity is required to notify the Service of its final decision on the implementation of the reasonable and prudent alternatives.

We request that HUD not release the funds for the proposed project until the responsible entity has notified the Service of its intentions and HUD has coordinated the release with the Service.

If you have any questions or comments please contact [Name] at [number].

Sincerely,

Field Supervisor