



UNITED STATES DEPARTMENT OF COMMERCE
 National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 1315 East West Highway
 Silver Spring, Maryland 20910
 THE DIRECTOR

APR 23 2003

MEMORANDUM FOR: Regional Administrators

FROM: William D. Hogarth, Ph.D.

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 National Marine Fisheries Service (NOAA Fisheries) policy regarding consultation under section 7 of the Endangered Species Act for certain projects authorized by the Department of Housing and Urban Development (HUD). Under twelve 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 (NAHASDA), (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 (ESA) is one of the laws for which responsible entities may assume responsibility for compliance.

Governments that have been designated by HUD as "responsible entities" under 24 CFR part 58 are directly responsible for assuring compliance with those Federal environmental laws described in the regulation, and as such, they constitute the "Federal agency" responsible for consulting with NOAA Fisheries under section 7 of the ESA. According to HUD regulations and statutes, when eligible general government applicants apply for and accept HUD money under Part 58 programs, they agree to become the "responsible entity." However, Indian tribes conducting activities under NAHASDA and Section 184 have the option of agreeing to be the "responsible entity" or having HUD retain environmental responsibility. Under programs where the applicant is not a general local governmental entity, generally the unit of general local government is requested to be the "responsible entity."



NOAA Fisheries 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. The "responsible entity" will submit a certification letter to the Field Office, affirming their status as a "responsible entity" under part 58, with the request for section 7 consultation. Any questions about who the responsible entities are for a particular geographic area should be directed to the appropriate Community Planning and Development Director (CPD). A list of HUD regional/state contacts and a list of CPD Directors are attached.

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. 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. For any activity that may require compliance with the ESA 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. NMFS 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 compliance, 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, NMFS should notify HUD that the responsible entity has not satisfied the requirements of the ESA and HUD must take steps to address the issue. In particular, if NMFS makes a jeopardy or adverse modification determination, a copy of the Biological Opinion should be provided to the appropriate CPD Director. 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.

Please direct any questions concerning this matter to Phil Williams, Chief, Endangered Species Division at (301) 713-1401.

Attachment