

Part 610 – National Environmental Compliance Handbook

Subpart H – Exhibits

610.142 Sample ESA MOU With FWS/NMFS

AGENCY REVIEW DRAFT
10/15/96

MEMORANDUM OF UNDERSTANDING BETWEEN

Natural Resources Conservation Service (NRCS)
Fish and Wildlife Service (FWS)
National Marine Fisheries Service (NMFS)
The State of California (State)
California Association of Resource Conservation Districts (CARCD)¹

SECTION 1- PURPOSE

This Memorandum of Understanding (MOU) establishes a framework to proactively address the intent of the Federal Endangered Species Act (ESA) on non-Federal lands using a locally led watershed planning process. The FWS and NMFS share regulatory authority under the ESA. While the NRCS has no regulatory function under ESA, their programs and ties to private land users provide an opportunity to facilitate ESA compliance on non-Federal lands and help provide certainty to these users.

The MOU will foster interagency cooperation with local RCDs², Tribal governments, watershed-based groups, and private landowners in programs that contribute to the conservation and recovery of species of concern³ and their habitats. The MOU will also create a mechanism by which funds from a variety of sources may be made available for implementing appropriate management systems on non-Federal lands.

SECTION 2- OBJECTIVES

- (a) Accelerate the implementation of voluntary changes in resource management on non-Federal lands that will protect salmon and other species of concern, protect habitat, and improve water quality.
- (b) Provide interested agricultural land users with a way to achieve regulatory certainty under Federal and State endangered species laws as well as Federal and State water quality laws.
- (c) Make Farm Bill and other funds available to those who desire to implement a Farm or Ranch conservation plan⁴ that addresses species of concern and established water quality objectives.

¹ CARCD is the California Association of Resource Conservation Districts which represents the statewide interests of Resource Conservation Districts.

² RCDs are Resource Conservation Districts, which are legal sub-divisions of State Government authorized under Division 9 of the State Resources Code to carry out a program of natural resource conservation within their District boundaries

³ Species of Concern include State listed and sensitive species and Federal candidate, proposed, and listed species.

⁴ Farm and Ranch Conservation Plans are developed by land users with assistance from NRCS and RCDs,

(d) Create a process through which signatory Federal and State agencies provide fully coordinated and consistent technical assistance to local watershed planning efforts, a single point of contact for required reviews or consultations, and consistent and timely responses to requests for assistance and consultation under the Federal ESA.

SECTION 3- BACKGROUND

(a) California is faced with the significant challenge of managing its land and water to meet the needs of people and to protect and restore fish and wildlife habitats, especially for species of concern. A large number of species in California are currently listed or proposed for listing under State and Federal endangered species laws. In addition, hundreds of streams and stream segments have been designated as impaired under the Federal Clean Water Act.

(b) The State is proposing a comprehensive program to protect and restore coastal salmon watersheds that will sustain viable populations of anadromous salmonids and other species of concern. Successful implementation of this program will require collaboration and cooperation among local, State and Federal agencies, Tribal governments, private landowners and other stakeholders with interests in these coastal watersheds.

(c) Federal and State agencies have a variety of technical expertise and programs that provide management and/or restoration services to private landowners. With existing and proposed Federal listings, it is of utmost importance that delivery of these Services be consistent with ESA requirements, resource needs, cultural, social and economic conditions, and provide certainty to both the landowners and species of concern.

(d) The NMFS and the FWS each have significant responsibilities for ecosystem protection, and recognize a common purpose in reducing environmental degradation while protecting and restoring habitat needed to maintain viable populations of native species. With existing and pending listings, it is of utmost importance that delivery of these services is done in a manner that protects ecosystem and watershed health, maintains the full range of natural resource values, complies with ESA requirements, and provides guarantees to non Federal land users as they carry out their land use activities.

(e) NRCS delivers technical services and programs on a voluntary basis to provide landowners, Tribal governments, and local governments, on request through cooperative agreements with Resource Conservation Districts. Through these cooperative agreements, RCDs provide local land users access to NRCS technical assistance and various programs. NRCS has a traditional role in providing assistance to Private landowners who voluntarily plan and apply appropriate conservation measures to maintain or enhance the health of their lands. NRCS has the flexibility to extend this role to include the consideration of species of concern and water quality issues

SECTION 4- ROLES AND RESPONSIBILITIES

(a) It is mutually agreed that the signatories to this MOU will:

- 1) Review applicable NRCS Field Office Technical Guides (FOTGs) and Identify adjustments that may be needed in order to adequately address conservation of species of concern;

these plans are developed consistent with the information, guidance and standards contained in the local Field Office Technical Guide.

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- 2) Implement this MOU based on the availability of additional funding and personnel, at the levels necessary to carry out the new and innovative programs described in this MOU.
- 3) Establish a coordinated program of government support for the development and implementation of watershed management and restoration plans.
- 4) Work with RCDs and watershed groups in conducting outreach efforts to develop local support for a watershed-based approach to conserving and recovering species of concern, and meeting established water quality objectives.
- 5) Collaborate with non-Federal land users in monitoring and evaluating the long term effectiveness of watershed plans based on data collected as a result of a jointly developed monitoring plan.
- 6) Participate in a public outreach process to inform and seek input from local land users, residents and organizations on the status of species of concern, water quality concerns, agency responsibilities, and watershed-based alternatives available to address ESA requirements and attain established water quality objectives.
- 7) Actively seek means to support demonstration and restoration projects and other on-the-ground actions that are needed to restore watershed health, eliminate or minimize and mitigate the impact of "take" (as defined under the Federal ESA) and contribute to the conservation of species of concern.
- 8) Reach consensus on watersheds in which the collective financial and technical resources of the signatories should be focused,
- 9) Carry out this MOU in full recognition of the private property rights of private landowners, and the need to provide certainty to these landowners that they can continue to conduct their land use activities while conserving species of concern,
- 10) The State and Federal agencies with regulatory responsibility will develop (in consultation with interested parties) and implement an integrated regulatory review and approval process for watershed management and restoration plans.
- 11) Seek to involve all State and Federal entities with resources protection responsibilities in furtherance of the goals of this MOU

(b) The NRCS will:

- 1) Serve as the Federal action agency for consultation under Section 7 of the ESA on programmatic actions (under NRCS authority) that will support voluntary, non-Federal land user activities to improve habitat, conserve species of concern and address established water quality objectives. The FOTGs will serve as the basis for consultation with FWS and NMFS on actions to be carried out in the near future. Once watershed plans, (developed under NRCS planning guidelines), are completed they will be the basis for consultation to ensure ESA compliance.
- 2) Work directly with RCDs in accordance with existing cooperative agreements to carry out the intent and purpose of this MOU.
- 3) Upon request from RCDs, provide technical assistance in the development of watershed plans which satisfy National Environmental Policy Act (NEPA) requirements and contain biological

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assessments of the effects of selected management alternatives on species of concern.

4) Assist non-Federal land users on a voluntary basis in developing individual conservation plans in accordance with FOTGs.

5) Provide land users with practice standards and technical specifications to guide implementation of conservation practices contained in their individual conservation plans, and assure technical adequacy of practices associated with habitat for species of concern.

(b) The NMFS will:

1) Complete ESA consultation on amended FOTGs on a timely basis so they can provide a programmatic basis for selected activities.

2) Participate in early planning and review of watershed plans to facilitate a streamlined planning and consultation process.

3) Expeditiously review and co-sign or sign, as appropriate, consultation documents prepared by NMFS or FWS, as appropriate, that involve anadromous fish species.

4) Provide information on species for which NMFS is responsible, under the ESA, for use in the planning and consultation processes.

5) Coordinate with FWS to ensure the consultation documents addressing anadromous fish species meet NMFS criteria pursuant to regulatory responsibilities.

(c) The FWS will:

1) Serve as the primary contact with NRCS and state agencies for coordinating decisions on the design, implementation, and monitoring of habitat restoration and enhancement projects.

2) Conduct ESA consultations, in cooperation with NMFS, on RCD interim activities, NRCS FOTGs, and watershed plans. This will be done on a programmatic basis, rather than on individual conservation plans or projects, where possible.

3) Provide information on species for which FWS is responsible under the ESA for use in the planning and consultation processes.

(d) The State will:

1) Provide resources to RCDs and watershed groups to facilitate the development of watershed plans and local participation in the consultation process.

2) Provide signatories to this agreement with information on local resource issues that contribute to recovery planning efforts, e.g., resource information data bases as related to species of concern, water quality, etc.

3) Participate in efforts to develop watershed plans and strategies, and seek funds and partnerships to facilitate the implementation of conservation measures.

4) Ensure that those State agencies having regulatory and/or resource management responsibilities are actively involved in the development and implementation of watershed plans.

5) Collaborate with NRCS in development of planning guidelines for watershed plans.

(e) CARCD will:

1) Assist with statewide coordination of local efforts to develop watershed plans and strategies, maintain communication between involved agencies and advance the consultation process.

2) Help seek funds and partnerships to facilitate local RCDs implementation of conservation measures.

3) Provide education and outreach on natural resource management issues that contribute to recovery efforts.

4) Work with the private sector to facilitate the implementation of habitat restoration and enhancement projects.

5) Assist with review and amendment of FOTGs to ensure timely adoption of recommended changes and extension of information to local Districts.

SECTION 5- STRUCTURE

(a) This MOU provides a mechanism to enhance agency efficiency, build awareness and capacity at the local level, and provide for an effective voluntary means by which the goals of the ESA can be achieved.

(b) The Regional Director (FWS), Regional Administrator (NMFS), State Conservationist (NRCS), and Governor's Natural Resources Advisor (State) will comprise a steering committee to establish general standards and guidelines to guide the process outlined in this MOU and oversee its' implementation.

(c) An interagency technical advisory team, which includes but is not limited to, NRCS, FWS, NMFS and appropriate agencies of the State of California, will assist in the development of watershed plans to ensure their adequacy in addressing species of concern and established water quality objectives.

(d) Local Watershed groups, Coordinated Resource Management and Planning groups (CRMPs) and other entities, in coordination with Resource Conservation Districts, will play a key role in public outreach, provide for local stakeholders to take an active role in the planning process, and leverage opportunities for funding planned conservation measures.

(e) This MOU does not alter existing regulations, agency responsibilities and authorities. It specifically does not commit any agency to activities beyond the scope of their mission, funding and authorities. It is recognized that new funding and personnel will be necessary to carry out the responsibilities under this agreement.

AUTHORITIES

The Federal agencies are authorized to enter into this MOU pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C.; 1531-1544) and the Fish and Wildlife Coordination Act (16 U.S.C.; 661-667e). Under the ESA, the Secretary of the Interior, through the FWS, and the Secretary of Commerce, through the National Oceanic and Atmospheric Administration and NMFS, share the responsibilities for

ESA implementation, including the issuance of *biological opinions* and incidental take permits. It is the intent of both agencies to coordinate their respective responsibilities under the MOU to achieve maximum administrative efficiencies.

The NRCS is authorized under Public Law 74-46, 16 U.S.C;590 (a-f) to plan and carry out a national soil and water conservation program, and provide leadership in conservation, development, and productive use of the Nation's (non-Federal) soil, water and related resources.

The State of California is authorized under _____ to enter into this agreement with Federal agencies to plan and implement conservation measures.

DURATION OF AGREEMENT

This agreement becomes effective upon signature by all parties and remains in effect until modified by mutual consent or terminated with sixty days notice by any party. The action plans will be reviewed at least annually, and updated as necessary.

State Conservationist
Natural Resources Conservation Service _____
DATE

Regional Administrator
National Marine Fisheries Service _____
DATE

Regional Director
U.S. Fish and Wildlife Service _____
DATE

Secretary, The Resources Agency
State of California _____
DATE

President
California Association of
Resource Conservation Districts _____
DATE