

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Idaho State Office
1387 South Vinnell Way
Boise, Idaho 83709-1657

In Reply Refer To:
3000/6841 (933) P

July 11, 2003

EMS

Instruction Memorandum No. ID-2003-076

Expires: 09/30/2004

To: District Managers and Field Office Managers

From: State Director

Subject: Applicability of Section 7 of the Endangered Species Act (ESA) to the Mineral Leasing Act Program (43 CFR Part 3500)

Program Area: Solid Mineral Leasing and Threatened and Endangered Species Management.

Purpose: The purpose of this Instruction Memorandum (IM) is to repromulgate supplemental guidance for compliance with Section 7 of the ESA, when administering the phosphate and garnet mineral leasing programs in Idaho. The original guidance was sent out as IM No. ID-2001-053 (Attachment 1).

Policy/Action: Section 7 of the ESA applies to actions that are authorized, funded, or carried out in whole or in part by federal agencies and for which there is discretionary federal involvement or control (50 CFR Part 402). If BLM determines that a proposed action within our mineral leasing program may affect a listed species or its habitat (or a species proposed for listing), established Section 7 procedures will be followed. Refer to BLM Manual 6840, and 50 CFR Part 402 for detailed guidance on the ESA consultation process.

Although the issuance of a mineral lease on public land may be by (1) Bureau motion; (2) public submission of expression of interest; or (3) from a prospecting permit, the issuance of a lease and all subsequent actions (decision points) are discretionary except for Preference Right Leases. In the case of a Preference Right Lease, consultation must be completed before any authorization is made. Further, as a result of consultation, the lease may be modified or denied if the issuance of

the lease and the resulting mine development will adversely affect a listed species or its habitat. Specifically, there are several distinct decision points in a possible mineral leasing scenario (Attachment 2). These decision points are:

- Prospecting permit/exploration license issuance;
- Decision to lease (preference right, competitive, non-competitive);
- Lease modifications;
- Mine plan approval; and
- Mine plan modification.

Each of these decision points is a distinct discretionary action and requires a reevaluation of possible effects to threatened and endangered species unless covered under the scope of a preceding consultation that addressed the issues. Each decision point may identify the need for further Section 7 consultation.

There are four conditions under which ESA consultation would be reinitiated for any of the decision points:

- The amount or extent of incidental take is exceeded as a result of the decision;
- New information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered;
- The action is modified in a manner causing effects to listed species or critical habitat not previously considered; and
- A new species is listed or critical habitat designated that may be affected by the action.

Timeframe: This IM is in effect on the date of issuance.

Background: No clear guidance has ever been established as to when Section 7 consultation is necessary in the mineral leasing process. This provides Idaho specific interim guidance for such activities.

Manual/Handbook Sections Affected: BLM Manual 6840.

Coordination: District and Field Office minerals and wildlife personnel need to coordinate activities within the mineral leasing process.

Contact: Should you have questions, please contact Karen Shilling for leasable minerals information at (208) 373-3884 or Signe Sather-Blair for ESA information at (208) 373-3827.

Lower Snake River District with Union: No Union notification or negotiation is required.

Signed by:
K Lynn Bennett

Authenticated by:
Susanna M. Henry
Staff Assistant (ID-933)

Attachments

- 1 – IM No. ID-2001-053 (3pp)
- 2 – Diagram: Phosphate Leasing Scenario

cc:
ID-931

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Idaho State Office
1387 South Vinnell Way
Boise, Idaho 83709-1657

In Reply Refer To:
2800/1150 (933) N

June 26, 2001

EMS
Instruction Memorandum No. ID-2001-053
Expires: 09/30/2002

To: Idaho Field Offices

From: State Director

Subject: Applicability of Section 7 of the Endangered Species Act (ESA) to the Mineral Leasing Act Program (43 CFR 3500)

The purpose of this Instruction Memorandum (IM) is to provide supplemental guidance for compliance with Section 7 of the ESA, when administering the phosphate and garnet mineral leasing programs in Idaho.

Section 7 of the ESA applies to actions that are authorized, funded, or carried out in whole or in part by federal agencies and for which there is discretionary federal involvement or control (50 CFR 402). If BLM determines that a proposed action within our mineral leasing program may affect a listed species or its habitat (or a species proposed for listing), established Section 7 procedures will be followed. Please refer to BLM Manual 1684, and 50 CFR Part 402 for detailed guidance on the ESA consultation process.

Although the issuance of a mineral lease on public land may be by (1) Bureau motion, (2) public submission of expression of interest, or (3) from a prospecting permit, the issuance of a lease and all subsequent actions (decision points) are discretionary except for Preference Right Leases. In the case of a Preference Right Lease, consultation must be completed before any authorization is made. Further, as a result of consultation, the lease may be modified or denied if the issuance of the lease and the resulting mine development will adversely affect a listed species or its habitat. Specifically, there are several distinct decision points in a possible mineral leasing scenario (see Attachment - Diagram 1). These decision points are:

- Prospecting permit/exploration license issuance.
- Decision to lease (preference right, competitive, non-competitive).
- Lease modifications.
- Mine plan approval.
- Mine plan modification.

Each of these decision points is a distinct discretionary action and requires a reevaluation of possible effects to threatened and endangered species unless covered under the scope of a preceding consultation that addressed the issues. Each decision point may identify the need for further Section 7 consultation.

There are four conditions under which ESA consultation would be reinitiated for any of the decision points:

1. The amount or extent of incidental take is exceeded as a result of the decision;
2. New information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered;
3. The action is modified in a manner causing effects to listed species or critical habitat not previously considered; and
4. A new species is listed or critical habitat designated that may be affected by the action.

Should you have questions, please contact Bill Lee for leasable minerals information at (208) 373-3818, or Signe Sather-Blair for ESA information at (208) 373-3827.

Signed by:
Martha G. Hahn

Authenticated by:
Susanna M. Henry
Staff Assistant (ID-933)

Attachment

ATTACHMENT - DIAGRAM 1

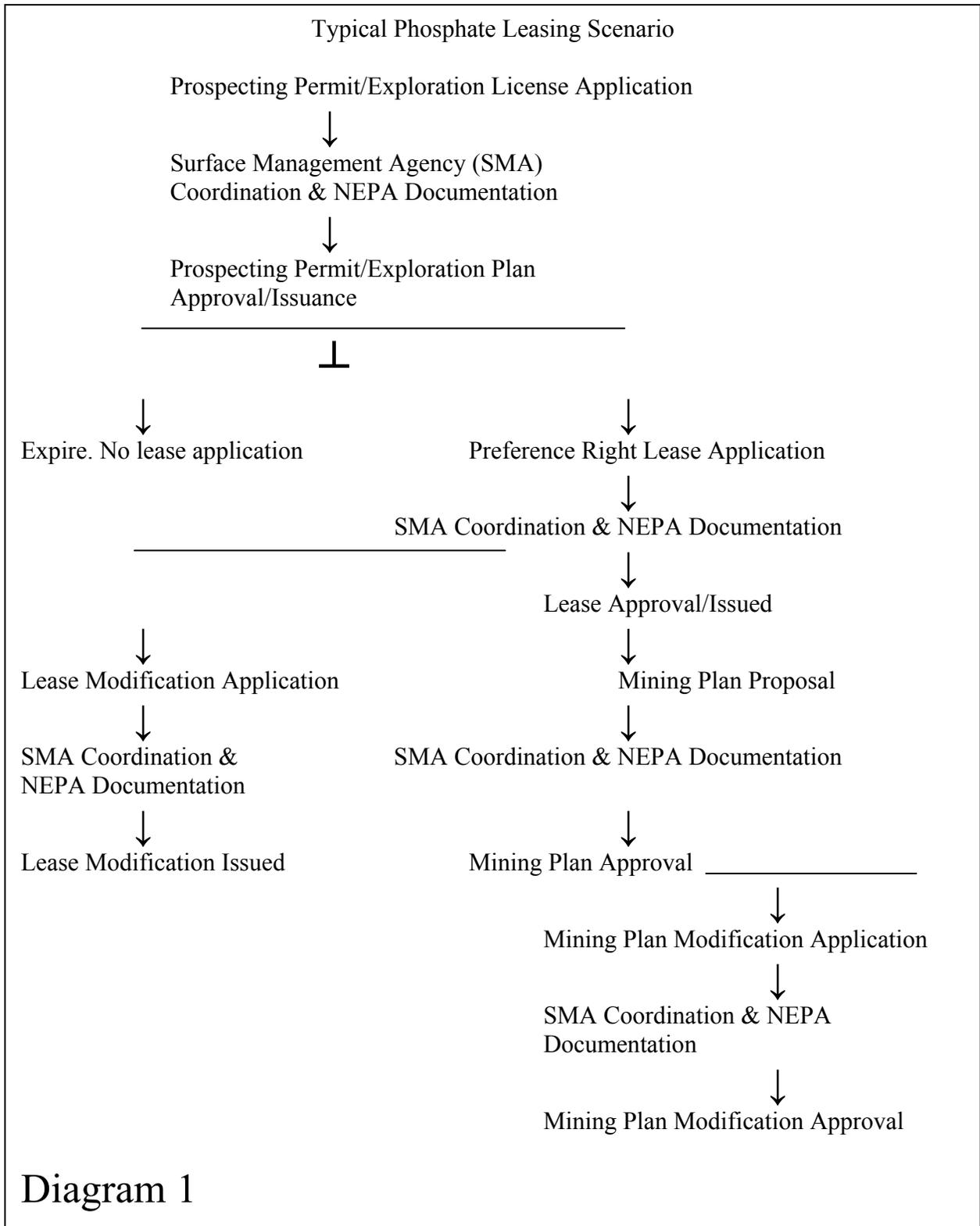


Diagram 1

ATTACHMENT 2 - DIAGRAM 1

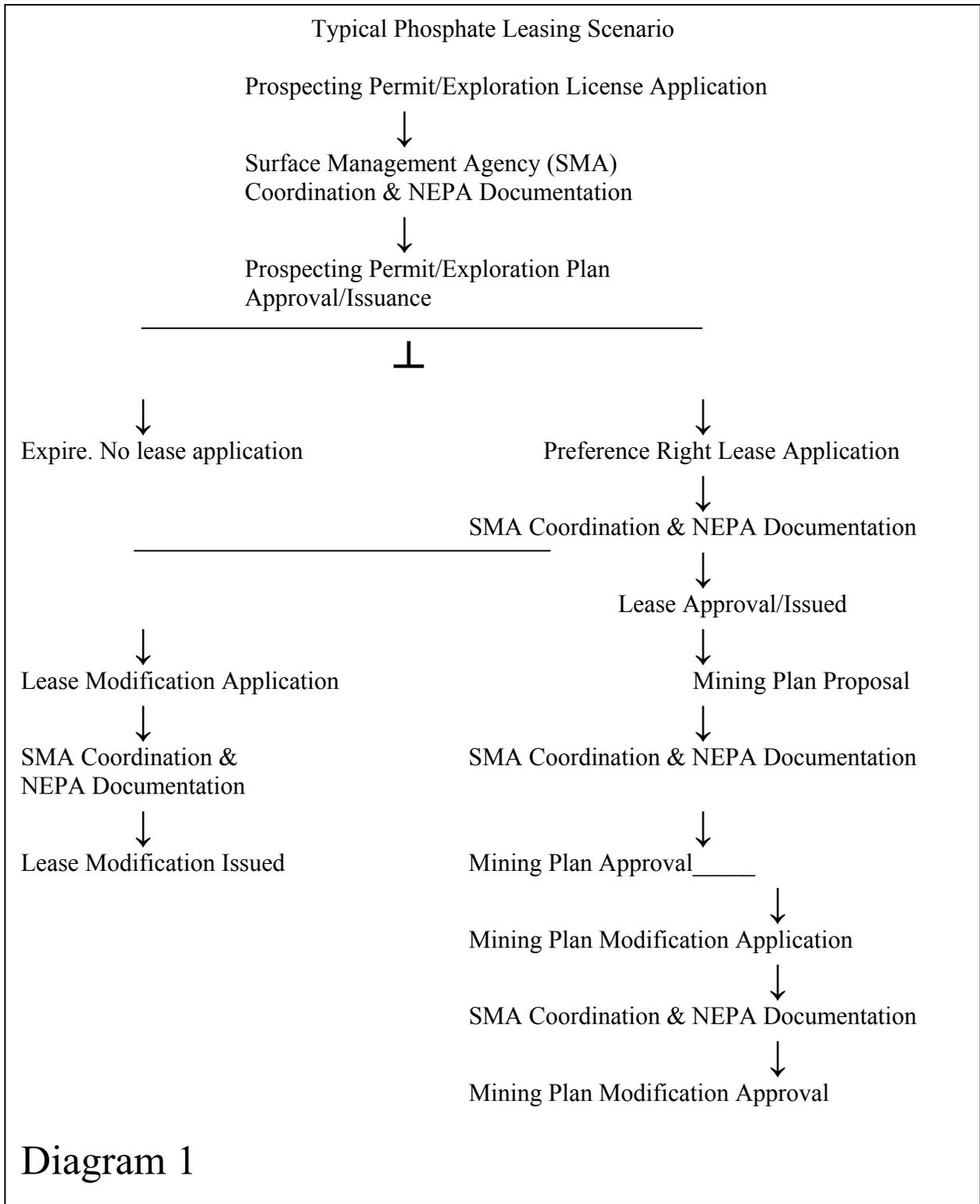


Diagram 1