

Consultation Agreement

**Bureau of Land Management – Central Oregon Resource Area, Prineville District
U.S. Fish and Wildlife Service – Bend Field Office
National Marine Fisheries Services – Eastern Oregon Branch**

John Day Basin Resource Management Plan

May 2010

I. Purpose:

This agreement establishes a cooperative process upon which Endangered Species Act (ESA) Section 7 consultation will be conducted by the Central Oregon Resource Area, Prineville District (BLM) with the Bend Oregon Field Office of the U.S. Fish and Wildlife Service (FWS) and the Eastern Oregon Branch Office (EOHB) of the National Marine Fisheries Service (NMFS). This agreement is for the interagency consultation upon the effects of a proposed new Resource Management Plan (RMP) for the Central Oregon Resource Area. Attachment 1 contains an overview of the BLM planning process. This agreement tiers to, and builds upon, responsibilities and commitments for each agency as outlined in:

1. *The National Memorandum of Understanding, Endangered Species Act, Section 7 Programmatic Consultations and Coordination among Bureau of Land Management, Forest Service, National Marine Fisheries Service, and Fish and Wildlife Service of August 30, 2000, and*
2. *The Interagency Agreement for Streamlining Section 7 Consultation in the Pacific Northwest, signed May 31, 1995.*

This agreement will serve to further define the process, products, actions and expectations of the parties while working together to complete Section 7 consultations for this planning effort. It will be a guiding document for all agencies throughout the consultation process. Early coordination on biological assessments (BA's) will reduce the need for additional information after previously agreed upon BA's are received by FWS and NMFS.

The process outlined in this agreement will provide ESA Section 7 programmatic coordination and consultation to complete the land use plan, the Biological Assessments (BA's), and the Biological Opinions (BO's). The sharing of knowledge and awareness about the ESA and land use planning among the agencies will enhance future consultation efforts for resource management, protection and recovery of threatened, endangered, proposed, and candidate (TEPC) species.

II. Background:

1. RMP's provide guidance and direction for management of BLM lands for a 10 to 20 year period. Resource management planning is used by BLM to allocate resources and select appropriate uses for public lands. Developed plans establish practices to manage and protect resources. They also set up systems to monitor and evaluate the status of resources and the effectiveness of management practices over time. Planning efforts are focused on significant multiple-use problems and issues. As far as possible, they use existing information about local resources, unless additional data-gathering or inventories are necessary for sound resource decisions. Planning is fully integrated with the environmental analysis process used to comply with the National Environmental Policy Act.
2. The proposed action to be evaluated through consultation is the preferred alternative, as developed through the planning process for the John Day Basin RMP. The RMP management direction includes, but is not limited to RMP goals, objectives, standards and guidelines. Direction in the RMP is general and large scale. The consultation is for a proposed plan-level action, and may include some site-specific projects. Since plan-level direction is general, this consultation will not preclude or supplant requirements for subsequent site-specific project-level consideration of TEPC species. Attachment 2 contains an overview of the consultation process. Attachment 3 illustrates the relationships between the planning and consultation processes. Attachment 4 shows the sequence for completion of the BA's and BO's. Actual timeframes may depend upon the availability of staff resources in the future, which may not be controlled by the signatories of this agreement.
3. Actions, Process, and Progress to Date. Beginning April, 2006 the parties have engaged in early coordination to discuss timelines, processes, listed and candidate species, and the formulation of the Aquatic Conservation Strategy (ACS). In June, 2007 the ACS was sent out to the parties for review. All comments received from USFWS and NMFS were incorporated into the final ACS. The draft RMP was sent out in November, 2008 to the parties for review.

III. Process

1. Planning. Land management plans and programs incorporating conservation standards and guidelines will be more likely to provide beneficial effects to species. The basic goal is that land management plans and programs offering the protection of these standards and guidelines would not jeopardize listed or proposed species, or move candidate species closer to listing.
2. Biological Assessment. The BLM will develop and submit to the FWS and NMFS one BA for the planning effort which analyzes the effects of applying proposed RMP direction on threatened, endangered, and proposed (TEP) species and their habitats. The FWS and NMFS will participate in assessing effects and reaching agreement on the content of the BA at both the informal and formal levels of consultation. A draft BA

will be written by the action agency and receive agreement by all agencies. The BA will include: a description of the proposed action, including impact minimization measures and monitoring requirements; a description of the environmental baseline of the action area; a description of all anticipated environmental effects including analyses of effects on listed, and proposed species and their critical habitats; and any other relevant reports and other information, including the EIS.

3. Biological Opinions/Conference Reports. Using the BA that was found acceptable by the Level 1 Team, the FWS and NMFS will prepare and submit draft BO's to the BLM for review and comment. FWS and NMFS will finalize the BO's and prepare any necessary formal Conference Reports on effects to proposed species and any proposed critical habitat. The Conference Reports will be of sufficient detail to become Biological Opinions should any species of concern become listed during the planning process or thereafter (assuming conditions are similar as to what was analyzed for the BA and conference report).

IV. Expectations

1. Overall Approach. Essential to implementation of the MOA for Programmatic Consultation is early coordination and consideration of conservation elements during the RMP planning process. The specific intent of streamlined consultation procedures is:
 - a. To further the conservation of listed, and proposed species by utilizing applicable plans and guidance to provide increased beneficial effects, avoid or minimize adverse effects and reduce levels of incidental take, and
 - b. To enable the section 7 process, including review, analysis, and documentation, to proceed as efficiently as possible.
2. Species Coverage. Agencies will consult/conference on listed species and designated critical habitat, proposed species, and proposed critical habitat as a part of the analysis of effects.
3. Adaptive Process. This consultation agreement may be modified, as needed, during the course of the consultation process.
4. Plan and Program Level. Action agency plans and programs will be designed to benefit candidate, proposed and listed species so that future actions will be "non jeopardy" and future consultations will be much easier to complete.
5. Promote Conservation and Recovery. Conservation actions for candidates, proposed and listed species will be built into RMP's. At a minimum, programs will be designed to minimize impacts to candidate, proposed and listed species.

V. Operations

1. BLM agrees to:

- a. Set up and participate in interagency meetings designed to help the FWS and NMFS understand the programmatic documents. This information will, at a minimum, explain RMP goals, objectives, standards and guidelines as envisioned by the BLM.
- b. Provide fishery, wildlife, and botanist members from the planning Team, who will participate in assessing effects and developing the ESA Section 7 BA at both the informal and formal levels of consultation. Other specialists will be made available to provide information, as needed.
- c. Develop the draft BA and submit to the FWS and NMFS, receive agreement by all agencies, and follow the BA format as described in *Section IX, Item 5 of the Implementation Guidance for the National Programmatic MOA*.
- d. The BA will address proposed species and critical habitat, to facilitate preparation of subsequent Conference Reports, which will form the basis of Biological Opinions should the species of concern become listed during the term of the RMP.
- e. To the extent possible, provide any supplemental information requested by the regulatory agencies during consultation.
- f. Provide the NMFS and USFWS with project timelines and other procedural elements of the RMP development that affects collateral input during consultation.

2. The Fish and Wildlife Service and National Marine Fisheries Service agree to:

- a. Participate in interagency meetings designed to help the FWS and NMFS understand the programmatic documents.
- b. Participate in early coordination with the BLM to assist in the identification of species conservation opportunities in programmatic planning efforts.
- c. Participate in assessing effects and developing the BA at both the informal and formal levels of consultation.
- d. Provide informal review of drafts of the BA transmitted by the BLM Field Office and submit comments within 14 days.

- e. Prepare any necessary formal Conference Reports on effects to proposed species and any proposed critical habitat. The Conference Reports will be of sufficient detail to become Biological Opinions should the species of concern become listed during the term of the RMP (incorporating new information as necessary).
 - f. Follow the intent of *The National Memorandum of Understanding, Endangered Species Act, Section 7 Programmatic Consultations and Coordination among Bureau of Land Management, Forest Service, National Marine Fisheries Service, and Fish and Wildlife Service of August 30, 2000* in providing a letter of concurrence or a biological opinion with receipt of the final BA and a letter requesting consultation.
 - g. Provide the BLM with project timelines and other procedural elements of the BO development that affects collateral input during consultation.
3. All agencies mutually agree to:
- a. Actively participate in the ESA Section 7 consultation process.
 - b. Each agency will assign a senior staff biologist to a special level one team (called the Program Level ESA Working Group in the 2000 MOA) to conduct the consultation.
 - c. Develop and abide by a dispute resolution process outlined in the national MOA.
 - i. The Level 2 Team (referred to as the “Local Issue Resolution Working Group” in the national MOA) will consist of BLM’s Prineville District Manager, FWS’ Bend Oregon Field Office Supervisor, and NMFS’ Eastern Oregon Branch Chief. The level two team may also include any of the Central Oregon Level 2 Team National Forests Supervisors to assist in its deliberations.
 - ii. The composition of the Regional/State Issue Resolution Working group, the Regional/State Technical Support Group, and the National Issue Resolution Working Group is beyond the scope and authorities of the signatories of this agreement.
 - d. The Central Oregon Level Two team for streamlining will be responsible for ensuring that process agreements are honored and for ensuring that the Planning Team has adequate resources to complete work.
 - e. Ad hoc conference calls of the standing Central Oregon Level Two team will take

up issues elevated by the level one team.

- f. Modifications. Changes within the scope of this instrument shall be made by the issuance of a trilaterally executed modification.
- g. Freedom of Information Act (FOIA). Any information furnished to the several agencies under this instrument is subject to FOIA (5 U.S.C. 552), within proper consideration of any applicable exceptions.
- h. Termination. Any one of the parties, in writing, may terminate their portion of the instrument in whole, or in part, at any time before the date of expiration.
- i. Participation in Similar Activities. This instrument in no way restricts BLM, FWS or NMFS from participating in similar activities with other public or private agencies, organizations, or individuals.
- j. Action and Completion Dates. This instrument is executed as of the date of last signature and, unless terminated earlier, is effective through completion of consultation/conferencing on the planning effort.
- k. Principal Contacts. The Principal Contacts for this instrument are:

Nancy Gilbert
FWS
20310 Empire Avenue
Suite A-100
Bend, OR 97701

Spencer Hovekamp
NMFS
3502 Highway 30
La Grande, OR 97850

Jimmy Eisner
BLM Fisheries Biologist
Central Oregon Resource Area
3050 NE 3rd Street
Prineville, OR 97754

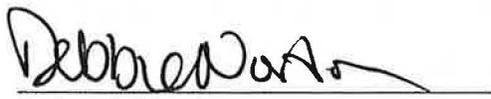
Monte Kuk
BLM RMP Team Lead
Central Oregon Resource Area
3050 NE 3rd Street
Prineville, OR 97754

H. F. "Chip" Faver
Field Manager, Central Oregon Resource Area
Prineville BLM
3050 NE 3rd Street
Prineville, OR 97754

Deborah Henderson-Norton
District Manager
Prineville BLM
3050 NE 3rd Street
Prineville, OR 97754

1. NONFUND OBLIGATING DOCUMENT. This instrument is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties to this instrument will be handled in accordance with applicable laws, regulations, and procedures, including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide any such authority. Specifically, this instrument does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

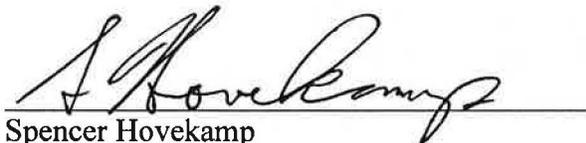
The undersigned responsible managers agree to implement this Consultation Agreement:


Deborah Henderson-Norton
Prineville District Manager
Bureau of Land Management

5/21/2010
Date


Nancy Gilbert
Central Oregon Field Office Supervisor
US Fish & Wildlife Service

5/21/10
Date


Spencer Hovekamp
Eastern Oregon Branch Chief
National Marine Fisheries Services

5/21/2010
Date

THE BUREAU OF LAND MANAGEMENT PLANNING PROCESS
- AN OVERVIEW -

Resource management planning is used by the Bureau of Land Management (BLM) to allocate resources and select appropriate uses for the public lands. Developed plans establish practices to manage and protect resources. They also set up systems to monitor and evaluate the status of resources and the effectiveness of management practices over time. The BLM focuses its planning efforts on significant multiple-use problems and issues. As far as possible, it uses existing information about local resources, unless additional data-gathering or inventories are necessary for sound resource decisions. Planning is fully integrated with the environmental analysis process used to comply with the National Environmental Policy Act.

Congress has outlined a number of principles to guide BLM in its land use planning efforts. When BLM develops or amends Resource Management Plans (RMPs), it must:

- \$ follow the principles of multiple use and sustained yield;
- \$ use a systematic, interdisciplinary approach, fully considering physical, biological, economic, and social aspects of public land management;
- \$ identify, designate, protect and specially manage areas of critical environmental concern;
- \$ consider relative significance of the public land products, services, and use to local economies;
- \$ rely on the inventory of the public lands, their resources, and other values, to the extent such information is available;
- \$ consider present and potential uses of the public lands;
- \$ consider impact of Federal actions on adjacent or nearby non-Federal lands and on private land surface over Federally-owned subsurface minerals;
- \$ consider the relative scarcity of the values involved and the availability of alternative means and sites for realization of those values;
- \$ weigh long-term benefits and consequences of proposed actions against short-term benefits and consequences;
- \$ comply with the Endangered Species Act and other applicable laws, including pollution control laws, State and Federal air, water, noise, and other pollution standards and plans;
- \$ to the extent consistent with the public laws, coordinate with, give consideration to land use planning and management programs of, and develop plans consistent with other Federal departments and agencies, States and local governments, and Indian tribes; and
- \$ provide the public with early notice and frequent opportunities to participate in the preparation of plans.

The RMP generally establishes, in a written document:

- \$ land areas for limited, restrictive, or exclusive use;
- \$ allowable resource uses and minimum or maximum levels of production or use to be maintained;
- \$ resource condition goals and objectives;
- \$ program constraints and general management practices that affect planned management actions, including consideration of social and economic conditions, demands and constraints;
- \$ need for, and area to be covered by, more detailed and specific activity plans;
- \$ support actions necessary to achieve specific resource goals and objectives;
- \$ general sequences, that is, actions which cannot begin until other actions are accomplished;
- \$ intervals or standards for monitoring or evaluating the plan to determine its effectiveness or the need for amendment or revisions.

RMP/EIS LEVEL PLANNING PROCESS STEPS

Identify Issues*: Identify issues or land use problems that need to be solved. This is an ongoing process that ties to the NEPA scoping process.

Develop Planning Criteria*: Planning criteria establish constraints and guides for the planning process, streamline the process, establish standards, rules, and measures, set the scope of inventory and data collection, identify the range of alternatives, and estimate the extent of analysis. Preliminary planning criteria developed by BLM can be modified through public comment.

Notice of Intent (NOI)/Scoping*: The NOI is published in the *Federal Register*, local media, mailings, etc. The NOI identifies the preliminary issues and planning criteria and provides for a 30-day public review and comment period. This is also the start of the formal NEPA scoping process inviting the public to identify issues or land use problems that need to be solved. In addition to the *Federal Register* notice, solicit ideas through mailings, newspaper articles, public meetings, and workshops. Gather, screen, and evaluate ideas from public, private, and internal sources. Summarize the issues to guide the planning process.

Collect Inventory Data*: Collect inventory data based on the planning criteria. Data are generally collected from existing sources. New data collection is limited to what is necessary to resolve the planning issues identified.

Analyze the Management Situation*: Gather information on the current management situation, describe pertinent physical and biological characteristics, and evaluate the capability and condition of the resources. The analysis provides a reference for developing and evaluating alternatives.

Formulate Alternatives*: Identify a range of reasonable combinations of resource uses and management practices. Develop reasonable alternatives addressing issues identified during scoping and offering a distinct choice among potential management strategies. This must include a no action alternative.

Estimate Effects of Alternatives: Estimate the impacts of each alternative on the environment and management situation.

Select the Preferred Alternative: The Field Manager and District Manager recommend to the State Director a preferred alternative that best resolves planning issues and promotes balanced multiple use objectives. The State Director approves the selection of the preferred alternative along with the other alternatives under consideration.

Draft RMP/EIS: The Notice of Availability (NOA) is published in the *Federal Register*, media, mailings, etc. The NOA notifies the public of the availability of the Draft RMP/EIS and provides for a 90-day public review and comment period.

Proposed RMP/EIS: Comments are evaluated and appropriate modifications are made. A

second NOA is published and a copy of the Proposed RMP/EIS Proposed Decision is filed with the EPA. This initiates the 30-day protest period under 43 CFR 1610.5-2.

Governor's Consistency Review: 60-day Governor's review to identify inconsistencies with State or local plans.

Protests: See the procedure outlined in Appendix F. The State Director may sign and implement that portion of the plan not under protest.

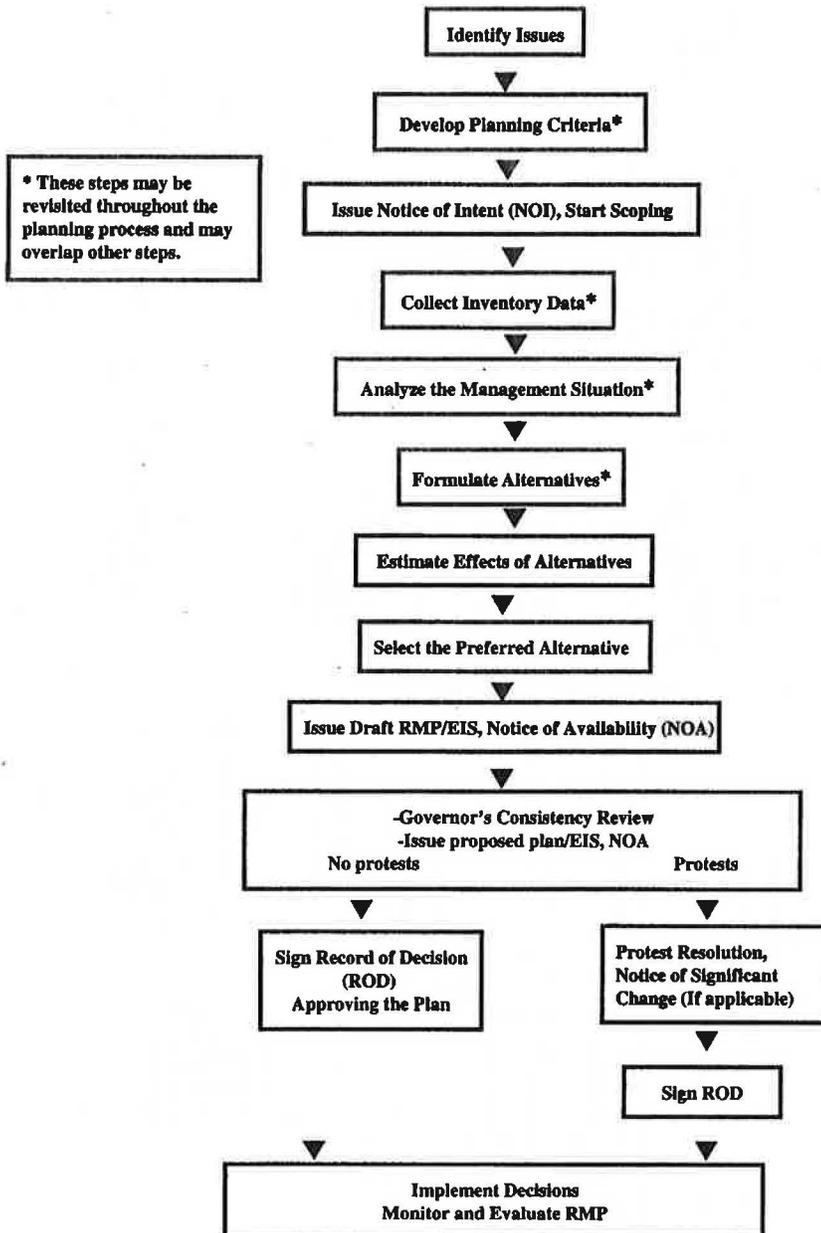
Notice of Significant Change: When a protest or consistency review results in significant changes to the proposed plan, a Notice of Significant Change is issued providing an additional 30-day comment period.

Plan Approval: Once protests have been resolved and the Governor's consistency review has been completed, the State Director approves the RMP by signing the Record of Decision (ROD).

Monitor and Evaluate the RMP: The plan must be continually monitored and evaluated until it is replaced.

* These steps may be revisited throughout the planning process and may overlap other steps.

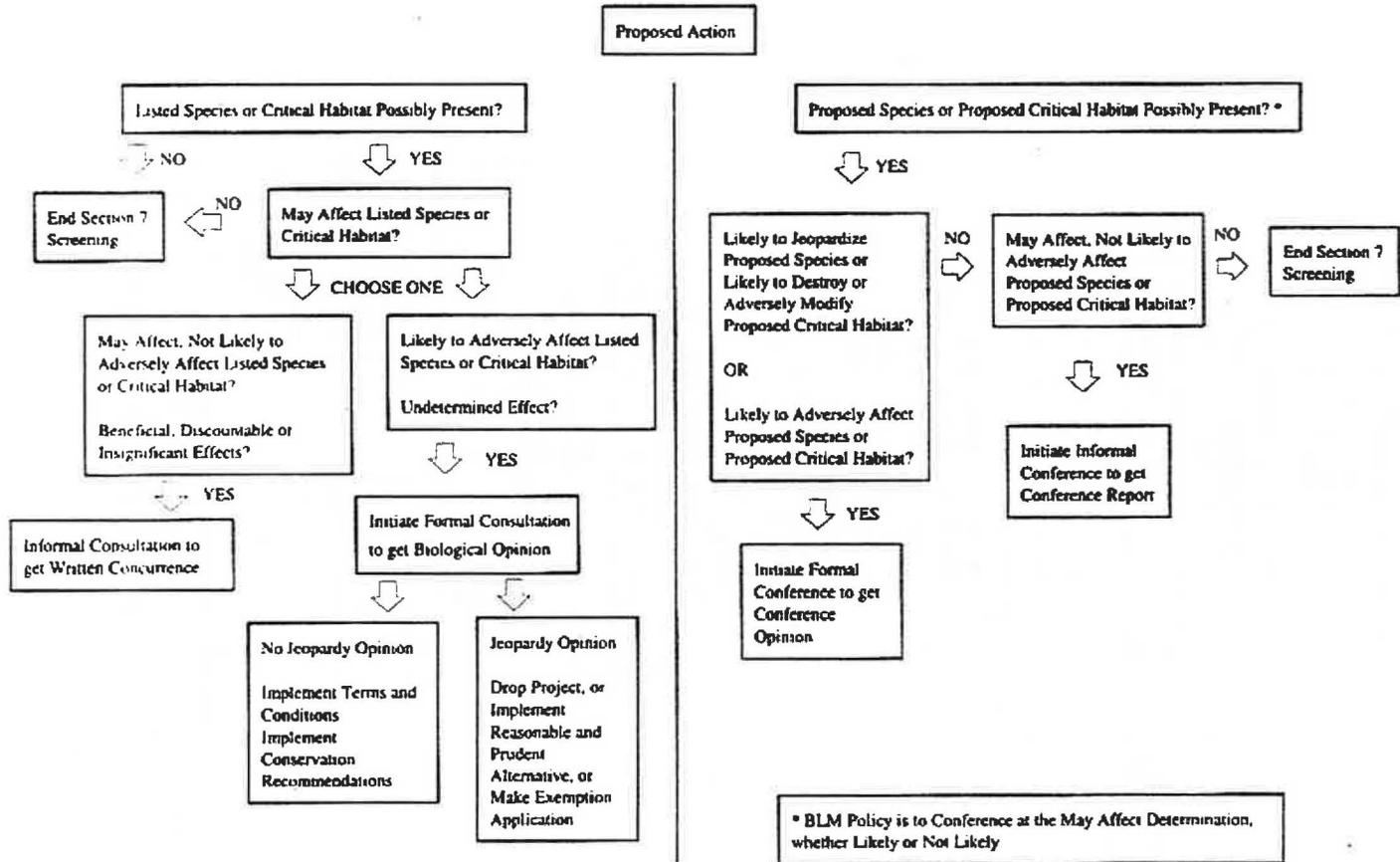
Fundamental Steps in the Planning Process



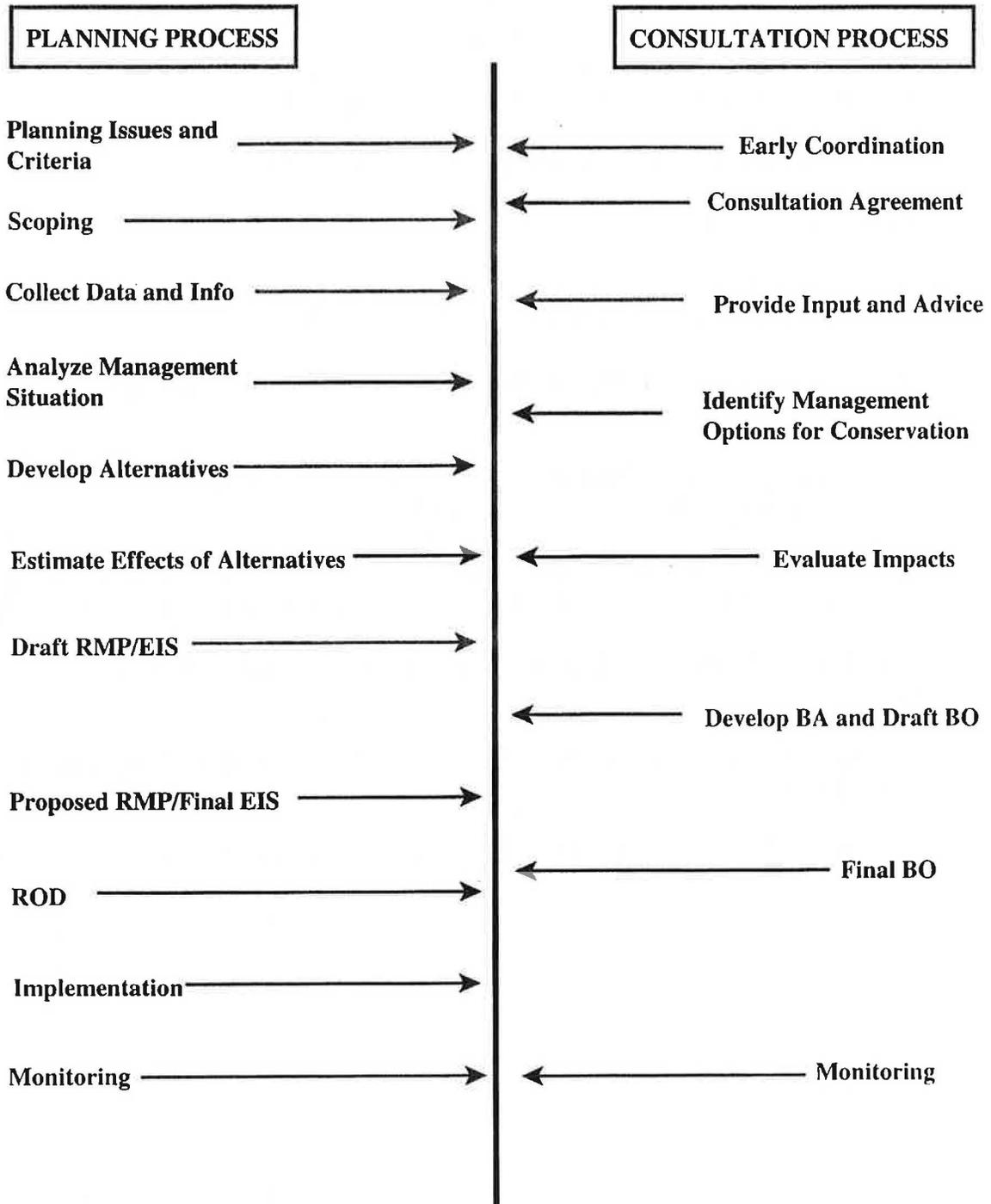
ESA Section 7 Consultation and Conference Flowchart

Listed Species or Critical Habitat

Proposed Species or Proposed Critical Habitat



RMP PLANNING AND CONSULTATION PROCESS



Process Sequence

The BLM, FWS and NMFS will work cooperatively during each planning phase and during the EIS preparation. Between the Draft and Final EIS's, the agencies will focus on the preparation of the Draft BA's. It is anticipated that by the time comments have been received a Draft EIS, and the Final EIS nears completion, the BA will be finalized. Listed below is the general process for the finalization of the BA and BO. Consultation progress will depend upon the availability of staff resources in the future, which the signatories to this document cannot control.

1. BLM transmits draft BA after the draft RMP is complete
2. FWS and NMFS provide the BLM comments on the draft BA.
3. BLM transmits draft BA after addressing FWS and NMFS.
4. FWS and NMFS reviews changes to the BA to ensure the BLM adequately addressed their comments on the draft in effect rendering a final product.
5. BLM edits if necessary the BA, and the District Manager requests initiation of consultation.
6. After receiving the consultation initiation request, FWS and NMFS concur with the request, or outline additional information needs.
7. If the FWS and NMFS identify additional information needs, the BLM provides any supplemental information to the FWS and NMFS within 30 days of receipt of the request.
8. FWS and NMFS submit the draft BO to the BLM after receiving adequate supplemental information.
9. BLM returns comments on the draft BO to FWS and NMFS within 14 days from receipt of that document.
10. FWS and NMFS transmit final BO to BLM after receiving BLM comments on draft BO.