

MEMORANDUM FOR MAJOR SUBORDINATE COMMANDS AND DISTRICT
COMMANDS

SUBJECT: Endangered Species Act Compliance

1. The current revised version of the Standard Operating Procedure (SOP) does not contain any discussion on determining the scope of analysis for Endangered Species Act (ESA) compliance. The discussion concerning using the National Environmental Policy Act or National Historic Preservation Act language/criteria for determining ESA scope of analysis was specifically removed and should no longer be cited. The following guidance will be use for ensuring compliance with section 7 of the ESA, including consideration of direct and indirect effects (formally identified as ESA scope of analysis).
2. The Corps of Engineers Regulatory Program will use the Endangered Species Act Interagency Consultation Regulations at 50 CFR Part 402, when determining compliance with Section 7 of the ESA. Further, the Section 7 Consultation Handbook generally provides useful guidance for compliance with the consultation requirements of the ESA and the ESA regulations. The Corps and the Services agree that the handbook should be used to govern the application of the consultation regulations to specific permit actions.
3. Nevertheless, we anticipate that in a small percentage of cases there may continue to be differences in agency interpretation regarding application of the consultation handbook and its examples to specific circumstances. To facilitate agreement in such cases, we have agreed with the Services to initiate a conflict resolution process for addressing disagreements on how to apply the regulations in a specific case regarding indirect effects/scope of analysis. The enclosed conflict resolution process is designed to resolve issues and to identify and document those situations where we and the Services are unable to reach agreement. The conflict resolution process will apply to all pending permit actions, as of the date of this letter. We plan to use this process for one year and then use that record to develop additional national guidance, if necessary.

CECW-OR

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4. Any questions regarding this guidance may be directed to Sam Collinson, at 202-761-1782.

FOR THE COMMANDER

Encl

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/S/
CHARLES M. HESS
Chief, Operations Division
Directorate of Civil Works