

<i>NATIONAL MARINE FISHERIES SERVICE PROCEDURE 02-110-28</i> Effective on: July 1, 1994	
To be reviewed on: October 1, 2023	
Protected Resources Management Conservation of Threatened and Endangered Species, 02-110	
Policy Regarding the Role of State Agencies in Endangered Species Act Activities	
NOTICE: This publication is available at: https://www.fisheries.noaa.gov/national/laws-and-policies/policy-directive-system	
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Type of Issuance: Renewal, October 2018	
<i>SUMMARY OF REVISIONS:</i> This policy was previously classified as ‘MOAs/MOUs/Cooperative Agreements/inter-Agency Cooperative’ (PDS number 02-301-11). This a joint policy with Fish and Wildlife Service regarding the Endangered Species Act.	
Signed _____ Donna Wieting Director, Office of Protected Resources	
Date _____	

I. Introduction

NMFS recognizes that, in the exercise of their general governmental powers, States possess broad trustee and police powers over fish, wildlife, and plants and their habitats within their borders. Unless preempted by Federal authority, States possess primary authority and responsibility for protection and management of fish, wildlife, and plants and their habitats. Section 6 of the Endangered Species Act (ESA) provides that NMFS shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act.

II. Objective

This policy is intended to clarify the role of State agencies in activities undertaken by the Services under authority of the ESA. The policy, which is a revision of a policy issued in 1994, reflects a renewed commitment by the Services and State fish and wildlife agencies to work together in conserving America's imperiled wildlife.

III. Guidance

The attached July 1, 1994 Federal Register Notice *Endangered and Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy regarding the Role of State Agencies in Endangered Species Act Activities*, published by Fish and Wildlife Service and NMFS, is NMFS' official policy. That Notice should be cited when referencing this policy.

[Federal Register: July 1, 1994]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants: Notice of
Interagency Cooperative Policy Regarding the Role of State Agencies in
Endangered Species Act Activities

AGENCIES: Fish and Wildlife Service, Interior, and National Marine
Fisheries Service, National Oceanic and Atmospheric Administration
(NOAA), Commerce.

ACTION: Notice of policy statement.

SUMMARY: The Fish and Wildlife Service and National Marine Fisheries
Service (hereafter referred to as Services) announce interagency policy
to clarify the role of State agencies in activities undertaken by the
Services under authority of the Endangered Species Act of 1973, as
amended (Act), and associated regulations in title 50 Code of Federal
Regulations.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jamie Rappaport Clark, Chief, Division
of Endangered Species, U.S. Fish and Wildlife Service, ARLSQ 452, 18th
and C Streets NW., Washington, DC 20240 (telephone 703/358-2171), or
Russell Bellmer, Chief, Endangered Species Division, National Marine
Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland
20910 (telephone 301/713-2322).

SUPPLEMENTARY INFORMATION:

Background

The Services recognizes that, in the exercise of their general governmental powers, States possess broad trustee and police powers over fish, wildlife and plants and their habitats within their borders. Unless preempted by Federal authority, States possess primary authority and responsibility for protection and management of fish, wildlife and plants and their habitats.

State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Services in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Services shall cooperate to the maximum extent practicable with the States in carrying out the program authorized by the Act. The term State agency means any State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish, plant, or wildlife resources within a State.

Policy

In the following Endangered Species Act programs, it is the policy of the Services to:

A. Prelisting Conservation

1. Utilize the expertise and solicit the information of State agencies in determining which species should be included on the list of candidate animal and plant species.
2. Utilize the expertise and solicit the information of State agencies in conducting population status inventories and geographical distribution surveys to determine which species warrant listing.
3. Utilize the expertise of State agencies in designing and implementing prelisting stabilization actions, consistent with their authorities, for species and habitat to remove or alleviate threats so that listing priority is reduced or listing as endangered or threatened is not warranted.
4. Utilize the expertise and solicit the information of State agencies in responding to listing petitions.

B. Listing

1. Utilize the expertise and solicit the information of State agencies in preparing proposed and final rules to: (a) List species as endangered or threatened, (b) define and describe those conditions under which take should be prohibited for threatened species, (c) designate critical habitat, and (d) reclassify a species from

endangered to threatened (or vice versa) or remove a species from the list.

2. Provide notification to State agencies of any proposed regulation in accordance with provisions of the Act.

C. Consultation

1. Inform State agencies of any Federal agency action that is likely to adversely affect listed or designated critical habitat; or that is likely to adversely affect proposed species or proposed critical habitat and request relevant information from them, including the results of any related studies, in analyzing the effects of the action and cumulative effects on the species and habitat.

2. Request an information update from State agencies prior to preparing the final biological opinion to ensure that the findings and recommendations are based on the best scientific and commercial data available.

3. Recommend to Federal agencies that they provide State agencies with copies of the final biological opinion unless the information related to the consultation is protected by national security classification or is confidential business information. Decisions to release such classified or confidential business information shall follow the action agency's procedures. Biological opinions, not containing such classified or confidential business information, will be provided to the State agencies by the Services, if not provided by the action agency, after 10 working days. The exception to this waiting period allows simultaneous provision of copies when there is a joint Federal-State consultation action.

D. Habitat Conservation Planning

1. Utilize the expertise and solicit the information and participation of State agencies in all aspects of the Habitat Conservation Planning (HCP) process.

E. Recovery

1. Utilize the expertise and solicit the information and participation of State agencies in all aspects of the recovery planning process for all species under their jurisdiction.

2. Utilize the expertise and solicit the information and participation of State agencies in implementing recovery plans for listed species. State agencies have the capabilities to carry out many of the actions identified in recovery plans and are in an excellent position to do so because of their close working relationships with local governments and landowners.

3. Utilize the expertise and authority of State agencies in designing and implementing monitoring programs for species that have been removed from the list of Endangered and Threatened Wildlife and Plants. Unless preempted by Federal authority, States possess primary authority and responsibility for protection and management of fish,

wildlife and plants and their habitats, and are in an excellent position to provide for the conservation of these species following their removal from the list.

Scope of Policy

The scope of this policy is Servicewide.

Authority

The authority for this policy is the Endangered Species Act of 1973, as amended (16 U.S.C. 1536).

Dated: June 27, 1994.

Mollie H. Beattie,
Director, U.S. Fish and Wildlife Service, Department of the Interior.

Dated: June 24, 1994.

Rolland A. Schmitt,
Assistant Administrator for Fisheries, National Marine Fisheries Service.

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