

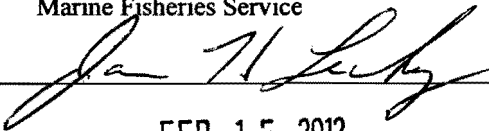
**National Marine Fisheries Service  
Endangered Species Act Section 7 Consultation  
Conference Review**

**Agency:** United States Forest Service

**Activities Considered:** Proposal to promulgate a new National Forest System Land Management Planning Rule (36 CFR 219; Planning Rule)

**Consultation Conducted by:** Interagency Cooperation Division of the Office of Protected Resources, National Marine Fisheries Service

**Approved by:**

  
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**Date:**

FEB 15 2012  
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This document acknowledges and responds to the request for consultation under section 7(a)(1) of the ESA. Section 7(a)(1) of the ESA states that all Federal agencies “shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act.” Conservation programs could include best management practices to avoid or minimize affected species, e.g., implementation or avoidance of certain actions in riparian areas; restoration or protection of habitat, e.g., removal of fish barriers or exotic species; or direct management of the species itself, e.g., propagation and reestablishment of species. Although this nationwide planning rule does not outline specific conservation measures for any given species, it does provide process and direction for land management planning on the forest unit scale to ensure that ecosystem and species needs are met via inclusion of certain plan components. Its requirements for specific land management plan components will influence a responsible official’s discretion and decision space when developing and approving a land management plan.

**Description of the Proposed Action**

The U.S. Forest Service proposes to replace its existing planning rule with a new National Forest System Land Management Planning Rule (36 CFR 219; Planning Rule) that establishes requirements and criteria applicable to land management plans developed for all units of the National Forest System, which encompasses 155 national forest, 20 grassland and 1 prairie unit and that prescribe minimum contents for these land management plans. The planning rule will replace the current planning rule for guiding land management planning pursuant to the National Forest Management Act of 1976 (88 Stat. 476; 16 U.S.C. 1601-1610; NFMA) which requires the Agency to have a planning rule developed “under the principles of the Multiple-Use, Sustained-Yield Act of 1960, that set[s] out the process for the development and revision of land management plans, and the guidelines and standards” (16 U.S.C. 1604(g)).

The Planning Rule sets forth process and content requirements to guide the development, amendment and revision of land management plans. The Planning Rule would be the first of a series of decisions the Forest Service makes before undertaking an action that affects the environment. In addition to the Planning Rule, the Forest Service must approve land management plans that are developed in compliance with the Planning Rule and it must authorize project-specific actions. Although the planning rule outlines broad policy for land management planning on NFS units and does not dictate plan content with any specificity nor authorize or fund specific actions, its requirements

for specific land management plan components will influence a responsible official's discretion and decision space when developing and approving a land management plan.

The following is a brief summary of the sections within the proposed rule that relevant to this Conservation Review:

Purpose and applicability (§ 219.1)

(c) The purpose of this part is to guide the collaborative and science-based development, amendment, and revision of land management plans that promote the ecological integrity of national forests and grasslands and other administrative units of the NFS. Plans will guide management of NFS lands so that they are ecologically sustainable and contribute to social and economic sustainability; consist of ecosystems and watersheds with ecological integrity and diverse plant and animal communities; and have the capacity to provide people and communities with ecosystem services that provide a range of social, economic, and ecological benefits for the present and into the future. These benefits include clean air and water; habitat for fish, wildlife, and plant communities; and opportunities for recreational, spiritual, educational, and cultural sustenance.

(f) Plans must comply with all applicable laws and regulations, including NFMA, MUSYA, the Clean Air Act, the Clean Water Act, the Wilderness Act, and the Endangered Species Act.

Levels of planning and responsible officials (§ 219.2)

(b) *National Forest System unit planning.* The Chief of the Forest Service is responsible for leadership and direction for carrying out the National Forest System land management planning program under this part. The Chief of the Forest Service shall:

(i) Establish planning procedures for this part in the Forest Service Directive System in Forest Service Manual 1920—Land Management Planning and in Forest Service Handbook 1909.12—Land Management Planning Handbook.

(ii) Establish and administer a national oversight process for accountability and consistency of NFS land management planning under this part.

Role of science in planning (§ 219.3)

The responsible official shall use the best available scientific information to inform the planning process identified in this subpart.

Requirements for public participation (§ 219.4)

(1) *Outreach.* The responsible official shall engage the public—including Tribes and Alaska Native Corporations, other Federal agencies, State and local governments, individuals, and public and private organizations or entities—early and throughout the planning process as required by this part, using collaborative processes where feasible and appropriate. In providing opportunities the responsible official shall encourage participation by:

(iv) Federal agencies, States, counties, and local governments, including State fish and wildlife agencies, State foresters and other relevant State agencies. Where appropriate, the responsible official shall encourage, States, counties, and other local governments to seek cooperating agency status in the NEPA process for development, amendment, or revision of a plan. The responsible official may participate in planning efforts of States, counties, local governments, and other Federal agencies, where practicable and appropriate.

(b) *Coordination with other public planning efforts.* (1) The responsible official shall coordinate land management planning with the equivalent and related planning efforts of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments.

### Planning framework (§ 219.5)

(a) Planning for a national forest, grassland, prairie, or other comparable administrative unit of the NFS is an iterative process that includes assessment; developing, amending, or revising a plan; and monitoring. These three phases of the framework are complementary and may overlap. The intent of this framework is to create a responsive planning process that informs integrated resource management and allows the Forest Service to adapt to changing conditions, including climate change, and improve management based on new information and monitoring.

(1) *Assessment.* Assessments rapidly evaluate existing information to assess relevant ecological, economic, and social conditions, trends, and sustainability and their relationship to the land management plan within the context of the broader landscape. The responsible official shall consider and evaluate existing and possible future conditions and trends of the plan area, and assess the sustainability of social, economic, and ecological systems within the plan area, in the context of the broader landscape.

(2) *Plan development, plan amendment, or plan revision.* Plan revision or plan amendment begins with the identification of a preliminary need to change the existing plan. For newly created planning units, the need for planning arises with the creation of the unit, unless otherwise provided by law.

(i) The process for developing or revising a plan includes: assessment, preliminary determination of the need to change the plan, development of a proposed plan, consideration of the environmental effects of the proposal, providing an opportunity to comment on the proposed plan, providing an opportunity to object before the proposal is approved, and, finally, approval of the plan or plan revision. A new plan or plan revision requires preparation of an EIS.

(ii) The process for amending a plan includes: preliminary determination of the need to change the plan, development of a proposed amendment, consideration of the environmental effects of the proposal, providing an opportunity to comment on the proposed amendment, providing an opportunity to object before the proposal is approved, and, finally, approval of the plan amendment. The appropriate NEPA documentation for an amendment may be an EIS, an environmental assessment (EA), or a categorical exclusion (CE), depending upon the scope and scale of the amendment and its likely effects.

(3) *Monitoring.* Monitoring is continuous and provides feedback for the planning cycle by testing relevant assumptions, tracking relevant conditions over time, and measuring management effectiveness. The monitoring program will include plan-level and broader-scale monitoring. The plan-level monitoring program will be informed by the assessment phase; developed during plan development, plan amendment, or plan revision; and implemented after plan approval. The regional forester develops broader-scale monitoring strategies. Biennial monitoring evaluation reports are to document whether a change to the plan or change to the monitoring program is warranted based on new information, whether a new assessment may be needed, or whether there is no need for change at that time.

(b) *Interdisciplinary team(s).* The responsible official shall establish an interdisciplinary team or teams to prepare assessments; new plans, plan amendments, and plan revisions; and plan monitoring programs.

### Assessment (§ 219.6)

An assessment rapidly evaluates existing information to assess relevant ecological, economic, and social conditions, trends, and sustainability and their relationship to the land management plan within the context of the broader landscape. The responsible official has the discretion to determine the scope, scale, and timing of an assessment, subject to the requirements of this section.

(b) *Content of the assessment for plan development or revision.* In the assessment(s) for plan development or revision, the responsible official shall identify and evaluate existing information relevant to the plan area for the following:

(1) Terrestrial, aquatic ecosystems, and watersheds;

- (2) Air, soil, and water resources and quality;
- (3) System drivers, including dominant ecological processes, disturbance regimes, and stressors, such as natural succession, wildland fire, invasive species, and climate change; and the ability of those terrestrial and aquatic ecosystems on the plan area to adapt to change;
- (5) Threatened, endangered, proposed, candidate species, and potential species of conservation concern present in the plan area;

New plan development or plan revision (§ 219.7)

*(c) Process for plan development or revision.*

- (1) The process for developing or revising a plan includes: public notification and participation, assessment, developing a proposed plan, considering the environmental effects of the proposal, providing an opportunity to comment on the proposed plan, providing an opportunity to object before the proposal is approved, and finally, approving the plan or plan revision. A new plan or plan revision requires preparation of an EIS.
- (2) In developing a proposed new plan or proposed plan revision, the responsible official shall:
  - (i) Review relevant information from the assessment phase and the monitoring phase to identify a preliminary need to change the existing plan and to inform the development of plan components and other plan content;
  - (ii) Consider the goals and objectives of the Forest Service strategic plan;
  - (iii) Identify the presence and consider the importance of various physical, biological, social, cultural, and historic resources on the plan area, with respect to the requirements for plan components;
  - (iv) Consider conditions, trends, and system drivers, with respect to the requirements for plan components.
  - (v) Identify and evaluate lands that may be suitable for potential wilderness and determine whether to recommend them for wilderness designation.
  - (vi) Identify the eligibility of rivers for inclusion in the National Wild and Scenic Rivers System, unless a systematic inventory has been previously completed and documented and there are no changed circumstances that warrant additional review.
  - (vii) Identify existing designated areas other than the areas identified in paragraphs (c)(2)(v) and (c)(2)(vi) of this section, and determine whether to recommend any additional areas for designation. If the responsible official has the delegated authority to designate a new area or modify an existing area, then the responsible official may designate such area when approving the plan, plan amendment, or plan revision.
  - (viii) Identify the suitability of areas for the appropriate integration of resource management and uses, with respect to the requirements for plan components, including identifying lands which are not suitable for timber production.
  - (x) Identify questions and indicators for the plan monitoring program.
- (3) The regional forester shall identify the species of conservation concern for the plan area in coordination with the responsible official.

*(e) Plan components.* Plan components guide future project and activity decisionmaking. The plan must indicate whether specific plan components apply to the entire plan area, to specific management areas or geographic areas, or to other areas as identified in the plan. Every project and activity must be consistent with the applicable plan components:

- (i) *Desired conditions.* A desired condition is a description of specific social, economic, and/or

ecological characteristics of the plan area, or a portion of the plan area, toward which management of the land and resources should be directed. Desired conditions must be described in terms that are specific enough to allow progress toward their achievement to be determined, but do not include completion dates.

(ii) *Objectives*. An objective is a concise, measurable, and time-specific statement of a desired rate of progress toward a desired condition or conditions. Objectives should be based on reasonably foreseeable budgets.

(iii) *Standards*. A standard is a mandatory constraint on project and activity decisionmaking established to help achieve or maintain the desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements.

(iv) *Guidelines*. A guideline is a constraint on project and activity decisionmaking that allows for departure from its terms, so long as the intent of the guideline is met. Guidelines are established to help achieve a desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements.

(v) *Suitability of lands*. Specific lands within a plan area may be identified as suitable for various multiple uses or activities based on the desired conditions applicable to that area. The plan may also identify lands within the plan area as not suitable for uses that are not compatible with desired conditions for those lands. Every plan must identify those lands in the plan area that are not suitable for timber production.

(3) *Requirements for the set of plan components*. The set of plan components must meet the requirements set forth in this part for sustainability; plant and animal diversity, multiple uses, and timber.

(f) *Other content in the plan*. Every plan must:

(i) Identify watershed(s) that are a priority for maintenance or restoration;

(ii) Describe the plan area's distinctive roles and contributions within the broader landscape;

(iii) Include the monitoring program; and

(iv) Contain information reflecting proposed and possible actions that may occur on the plan area during the life of the plan, including; the planned timber sale program; timber harvesting levels; and the proportion of probable methods of forest vegetation management practices expected to be used. Such information is not a commitment to take any action and is not a "proposal" as defined by the Council on Environmental Quality regulations for implementing NEPA.

#### Sustainability (§ 219.8)

The plan must provide for social, economic, and ecological sustainability within Forest Service authority and consistent with the inherent capability of the plan area, as follows:

(a) *Ecological sustainability*.

(1) *Ecosystem Integrity*. The plan must include plan components, including standards or guidelines, to maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area, including plan components to maintain or restore structure, function, composition, and connectivity, taking into account:

(i) Interdependence of terrestrial and aquatic ecosystems in the plan area;

(ii) Contributions of the plan area to ecological conditions within the broader landscape influenced by the plan area;

(iii) Conditions in the broader landscape that may influence the sustainability of resources and ecosystems within the plan area;

(iv) System drivers, such as natural succession, wildland fire, invasive species, and climate change; and the ability of those terrestrial and aquatic ecosystems on the plan area to adapt to change;

- (v) Wildland fire and opportunities to restore fire adapted ecosystems; and
  - (vi) Opportunities for landscape scale restoration.
- (2) *Air, soil, and water.* The plan must include plan components, including standards or guidelines, to maintain, protect, or restore:
- (i) Air quality;
  - (ii) Soils and soil productivity, including guidance to reduce soil erosion and sedimentation;
  - (iii) Water quality,
  - (iv) Water resources in the plan area, including lakes, streams and wetlands; ground water; public water supplies; sole source aquifers; source water protection areas; and other sources of drinking water; (including guidance to prevent or mitigate detrimental changes in quantity, quality, and availability);
- (3) *Riparian areas.*
- (i) The plan must include plan components, including standards or guidelines, to maintain, protect, or restore the ecological integrity of riparian areas in the plan area, including plan components to maintain, protect, or restore structure, function, composition, and connectivity, taking into account:
    - (A) Water temperature or chemical composition;
    - (B) Blockages (uncharacteristic and characteristic) of water courses;
    - (C) Deposits of sediment;
    - (D) Aquatic and terrestrial habitats;
    - (E) Ecological connectivity, and species movement; and
    - (F) Restoration needs.
  - (ii) Plans must establish width(s) for riparian management zones around all lakes, perennial and intermittent streams, and open water wetlands, within which the plan will apply, giving special attention to land and vegetation for approximately 100 feet from the edges of all perennial streams and lakes.
    - (A) Riparian management zone width(s) may vary based on ecologic or geomorphic factors or type of water body; and will apply unless replaced by a site-specific delineation of the riparian area.
    - (B) Plan components must ensure that no management practices causing detrimental changes in water temperature or chemical composition, blockages of water courses, or deposits of sediment that seriously and adversely affect water conditions or fish habitat shall be permitted within the riparian management zones or the site-specific delineated riparian areas.
- (4) *Best management practices.* The plan must require the use of national best management practices for water quality. The Chief of the Forest Service must include national best management practices for water quality in the Forest Service Directive System.

#### Diversity of plant and animal communities (§ 219.9)

The provisions under this section adopt a complementary ecosystem and species-specific approach to maintaining the diversity of plant and animal communities and the persistence of native species in the plan area. Compliance with the requirements are intended to provide the ecological conditions to both maintain the diversity of plant and animal communities and support the persistence of most native species in the plan area. When, in the judgment of the responsible official, compliance with the requirements are insufficient, additional species-specific plan components must be included. The plan must include plan components for providing ecological conditions to maintain the diversity of plant and animal communities and the persistence of native species in the plan area within Forest Service authority and consistent with the inherent capability of the plan area, as follows:

- (a) *Ecosystem integrity.* The plan must include plan components, including standards or guidelines, to maintain

or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area, including plan components to maintain or restore their structure, function, composition, and connectivity.

*(b) Ecosystem diversity.* The plan must include plan components, including standards or guidelines, to maintain or restore the diversity of ecosystems and habitat types throughout the plan area. In doing so, the plan must include plan components to maintain or restore:

- (1) Key characteristics associated with terrestrial and aquatic ecosystem types;
- (2) Rare aquatic and terrestrial plant and animal communities; and
- (3) The diversity of native tree species similar to that existing in the plan area.

*(c) Additional, species-specific plan components.*

(1) If the responsible official determines that the plan are insufficient to provide the ecological conditions necessary to: contribute to the recovery of federally listed threatened and endangered species, conserve proposed and candidate species, and maintain a viable population of each species of conservation concern within the plan area, then additional, species-specific plan components, including standards or guidelines, must be developed to provide such ecological conditions in the plan area.

(2) Where the responsible official determines that it is beyond the authority of the Forest Service, not within the inherent capability of the plan area, or not practicable to maintain or restore the ecological conditions to maintain a viable population of a species of conservation concern in the plan area, the responsible official must:

- (i) Document the basis for that determination; and
- (ii) Provide plan components to maintain or restore ecological conditions within the plan area to contribute to the extent practicable to maintaining a viable population of the species within its range. In providing such plan components the responsible official shall coordinate with other Federal, State, Tribal, and private land managers having management authority over lands where the population exists.

*(d) Species of conservation concern.* For purposes of this subpart, a species of conservation concern is a species, other than federally listed threatened, endangered, proposed, or candidate species, that is known to occur in the plan area and for which the regional forester has determined that the best available scientific information indicates substantial concern about the species' capability to persist over the long-term in the plan area.

#### Multiple uses (§ 219.10)

While meeting the requirements of previous sections, the plan must provide for ecosystem services and multiple uses, including outdoor recreation, range, timber, watershed, wildlife, and fish, within Forest Service authority and the inherent capability of the plan area as follows:

#### Timber requirements based on the NFMA (§ 219.11)

While meeting the requirements of previous sections, the plan must include plan components and other plan content regarding timber management, within Forest Service authority, and the inherent capability of the plan area.

*(c) Timber harvest for purposes other than timber production.* Except as provided, the plan may include plan components to allow for timber harvest for purposes other than timber production throughout the plan area, or portions of the plan area, as a tool to assist in achieving or maintaining one or more applicable desired conditions or objectives of the plan to protect other multiple-use values, and for salvage, sanitation, or public health or safety. Examples of using timber harvest to protect other multiple use purposes may include improving wildlife or fish habitat, thinning to reduce extreme fire risk, or restoring meadow or savanna ecosystems where trees have invaded.

*(d) Limitations on Timber harvest.* Whether for the purposes of timber production or other purposes, plan components must ensure the following:

- (1) No timber harvest for the purposes of timber production may occur on lands not suited for timber

production.

(2) No timber harvest may occur where the technology is not currently available for conducting timber harvest without causing irreversible damage to soil, slope, or other watershed conditions;

(3) Timber harvest is carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and aesthetic resources.

(5) Timber will be harvested from NFS lands only where such harvest would comply with the resource protections.

#### Monitoring (§ 219.12)

##### *(a) Plan monitoring program.*

(1) The responsible official shall develop a monitoring program for the plan area, and include it in the plan. Monitoring information should enable the responsible official to determine if a change in plan components and other plan content that guide management of resources on the plan area may be needed. The development of the plan monitoring program must be coordinated with the regional forester and agency staff from State and Private Forestry, and Research and Development. Responsible officials for two or more administrative units may jointly develop their plan monitoring programs.

(2) The plan monitoring program sets out the plan monitoring questions and associated indicators. Monitoring questions and associated indicators must be designed to inform the management of resources on the plan area, including by testing relevant assumptions, tracking relevant changes, and measuring management effectiveness and progress toward achieving or maintaining desired conditions or objectives. Questions and indicators should be based on one or more desired conditions, objectives, or other plan component in the plan, but not every plan component needs to have a corresponding monitoring question.

(3) The plan monitoring program should be coordinated and integrated with relevant broader-scale monitoring strategies, to ensure that monitoring is complementary and efficient, and that information is gathered at scales appropriate to the monitoring questions.

(4) The responsible official has the discretion to set the scope and scale of the plan monitoring program, after considering:

(i) Information needs identified through the planning process as most critical for informed management of resources on the plan area;

(ii) Best available scientific information; and

(iii) Financial and technical capabilities of the Agency.

(5) Each plan monitoring program must contain one or more monitoring questions and associated indicators addressing each of the following:

(i) The status of select watershed conditions;

(ii) The status of select ecological conditions including key characteristics of terrestrial and aquatic ecosystems;

(iii) The status of focal species to assess the ecological conditions required under § 219.9;

(iv) The status of ecological conditions required under § 219.9 to contribute to the recovery of federally listed threatened and endangered species; conserve proposed and candidate species; and maintain a viable population of each species of conservation concern within the plan area;

(vi) Measurable changes on the plan area related to climate change and other stressors on the plan area;

(vii) The progress toward meeting the desired conditions and objectives in the plan, including for providing multiple use opportunities; and

##### *(b) Broader-scale monitoring strategies.*

(1) The regional forester shall develop a broader-scale monitoring strategy for plan monitoring



questions that can best be answered at a geographic scale broader than one plan area.

(2) When developing a monitoring strategy, the regional forester shall coordinate with the relevant responsible officials, agency staff from State and Private Forestry and Research and Development, partners, and the public. Two or more regional foresters may jointly develop broader-scale monitoring strategies.

(c) *Timing and process for developing the plan monitoring program and broader-scale strategies.*

(1) The responsible official shall develop the plan monitoring program as part of the planning process for a new plan development or plan revision.

(2) The responsible official may develop the protocols and methods for the plan monitoring program after approving the plan monitoring program. The responsible official shall document how the best available scientific information was used to inform such development and shall make the documentation available to the public as soon as practicable.

(4) To the extent practicable, appropriate, and relevant to the monitoring questions in the program, plan monitoring programs and broader-scale strategies must be designed to take into account:

(i) Existing national and regional inventory, monitoring, and research programs of the Agency, including from the NFS, State and Private Forestry, and Research and Development, and of other governmental and non-governmental parties;

(ii) Opportunities to design and carry out multi-party monitoring with other Forest Service units, Federal, State or local government agencies, scientists, partners, and members of the public; and

(d) *Biennial evaluation of the monitoring information.*

(1) The responsible official shall conduct a biennial evaluation of new information gathered through the plan monitoring program and relevant information from the broader-scale strategy, and shall issue a written report of the evaluation and make it available to the public.

(2) The evaluation must indicate whether a change to the plan, management activities, or monitoring program may be warranted based on the new information. The monitoring evaluation report must be used to inform adaptive management on the plan area.

(3) The monitoring evaluation report may be incorporated into other planning documents if the responsible official has initiated a plan revision or relevant amendment.

Project and activity consistency with the plan (§ 219.15)

(d) *Determining consistency.* A project or activity approval document must describe how the project or activity is consistent with applicable plan components developed or revised in conformance with this part by meeting the following criteria:

(1) *Goals, desired conditions, and objectives.* The project or activity contributes to the maintenance or attainment of one or more goals, desired conditions, or objectives or does not foreclose the opportunity to maintain or achieve any goals, desired conditions, or objectives, over the long term.

(2) *Standards.* The project or activity complies with applicable standards.

(3) *Guidelines.* The project or activity:

(i) Is designed to comply with applicable guidelines as set out in the plan; or

(ii) Is designed in a way that is as effective in carrying out the intent of the applicable guidelines.

**Action Area**

The NFMA Planning Rule applies to land and resource management planning for all the lands and resources of the National Forest System (NFS), which includes approximately 193 million acres in 44 states, Puerto Rico, and the Virgin Islands (Figure 1). The NFS is composed of 155 national forests, 20 national grasslands, one national prairie, and other miscellaneous lands under the jurisdiction of the Secretary of Agriculture. The U.S. Forest Service

administers the NFS in accordance with the Multiple-Use Sustained-Yield Act (MUSYA), the NFMA, and other laws. Because NMFS only has jurisdiction over anadromous and estuarine fish species, marine mammals, sea turtles and marine invertebrates and their critical habitat, this consultation addresses the potential effects of the proposed planning rule in a portion of this Action Area.

**Species Affected**

Any listed or proposed species living on or downstream of U.S. Forest Service lands could be affected by the implementation of the Planning Rule. Because the Planning Rule may be effective for many decades, the specific species affected will change over time. However, it will always address endangered and threatened listed species, as well as proposed and candidate species on National Forest System lands, regardless of when they become listed.

NMFS has determined that the following species and their critical habitat may be affected currently by the proposed NFMA Planning Rule:

Table 1. Species and critical habitat designations considered in this consultation

Common Name	Scientific Name	Listed As
Beluga whale, Cook Inlet (with critical habitat)	<i>Delphinapterus leucas</i>	Endangered
Killer whale, Southern Resident (with critical habitat)	<i>Orcinus orca</i>	Endangered
Sea lion, Steller (eastern population)	<i>Eumetopias jubatus</i>	Threatened
Eulachon, Pacific (Southern population)	<i>Thaleichthys pacificus</i>	Threatened
Salmon, Chinook (California coastal) with critical habitat	<i>Oncorhynchus tshawytscha</i>	Threatened
Salmon, Chinook (Central Valley spring-run) with critical habitat		Threatened
Salmon, Chinook (Lower Columbia River) with critical habitat		Threatened
Salmon, Chinook (Puget Sound) with critical habitat		Threatened
Salmon, Chinook (Snake River fall-run) with critical habitat		Threatened
Salmon, Chinook (Snake River spring/summer-run) with critical habitat		Threatened
Salmon, Chinook (Upper Columbia River spring-run) with critical habitat		Endangered
Salmon, Chinook (Upper Willamette River) with critical habitat		Threatened
Salmon, Chum (Columbia River) with critical habitat	<i>Oncorhynchus keta</i>	Threatened
Salmon, Chum (Hood Canal summer run) with critical habitat		Threatened
Salmon, Coho (Lower Columbia River)		Threatened
Salmon, Coho (Oregon Coast)		Threatened
Salmon, Coho (Southern Oregon Northern Coastal California) with critical habitat		Threatened
Salmon, Sockeye (Snake River) with critical habitat		Endangered
Steelhead (California Central Valley) with critical habitat	<i>Oncorhynchus mykiss</i>	Threatened
Steelhead (Lower Columbia River) with critical habitat		Threatened
Steelhead (Middle Columbia River) with critical habitat		Threatened
Steelhead (Northern California) with critical habitat		Threatened
Steelhead (Snake River Basin) with critical habitat		Threatened
Steelhead (South Central California coast) with critical habitat		Threatened

Table 1. Species and critical habitat designations considered in this consultation

Common Name	Scientific Name	Listed As
Steelhead (Southern California) with critical habitat		Endangered
Steelhead (Upper Columbia River) with critical habitat		Threatened
Steelhead (Upper Willamette River) with critical habitat		Threatened
Sturgeon, Green (southern population) with critical habitat	<i>Acipenser medirostris</i>	Threatened
Sturgeon, Shortnose	<i>Acipenser brevirostrum</i>	Endangered

### Analysis of U.S. Forest Service Proposed Conservation Measures

Approval of the proposed Planning Rule is one in a series of steps that the agency will make before undertaking any activities on Forests that could affect species. The USFS takes three steps prior to implementing actual on-the-ground activities and incurring any site-specific effects: Development and approval of the planning rule, development and approval of a land management plan, and design and authorization of a project. Each step entails a narrowing of decision space and the possible range of effects. In an analysis of the conservation measures called for in the planning rule, it must be recognized that this is the first step in the process, and that the subsequent step of development and approval of a land management plan, as directed by the planning rule, will analyze more species-specific conservation measures in specific geographic locations. At this point, we are analyzing the processes and requirements that have been put in place to ensure the consideration and development of conservation actions are adequate and as consistent as possible across NFS units.

In analyzing the planning rule, we addressed the following concerns:

- 1) Is the process adequate to ensure consideration of all listed, proposed and candidate species, and their conservation needs?
- 2) Is the program (via its requirements) designed in such a way that it will guide future new and revised land management plans to improve the status of these species and their habitats, where authorities permit?
- 3) Is the program designed in such a way as to ensure that it will not contribute to the decline of listed, proposed, and candidate species or their habitats, and will not cause net loss of habitat of these species or diminution of their conservation status? and
- 4) Will the program provide a feedback and monitoring loop to ensure it's possible to ascertain management effectiveness and/or progress toward achieving conservation goals, whether they're landscape scale or management of species or populations?

The following is our discussion of each concern raised above:

- 1) Is the process adequate to ensure consideration of all listed, proposed and candidate species, and their conservation needs?

With regard to whether the process is adequate to ensure consideration of all listed, proposed and candidate species and their conservation needs, the planning rule achieves this by numerous means. It requires use of the best available scientific information to inform the planning process (section 219.3); it requires public participation

(219.4), including consultation with Tribes, coordination with other Federal agencies, states, counties and local agencies, private landowners, and coordination with other planning efforts, all of which potentially assist in ensuring effectiveness of the plan and coordination with neighboring activities; and it lays out a planning framework (219.5) by which NFS unit land management plans should be assessed (219.6), revised (or developed, if new) (219.7) or amended (219.13), and monitored (219.12).

The assessment portion of this framework must consider information related to ecosystems and watersheds, natural resources, and ecological system drivers and, importantly, must also evaluate existing information on threatened, endangered, proposed, candidate and potential species of conservation concern present in the plan area (219.6(b)(5)). The first step in subsequent 7(a)(1) consultations on land management plans should be to ensure all listed, proposed and candidate species are considered. In addition, new plans and plan revisions must consider an array of ecological, social and cultural information; identify management or geographical areas and required plan components (desired conditions, objectives, standards, guidelines, and suitability of lands for various uses); and meet certain requirements for the plan components for sustainability, plant and animal diversity, multiple uses and timber. The requirements for sustainability (219.8), and plant and animal diversity (219.9) are the sections of the rule that contribute most to ensuring adequate consideration of the needs of listed, proposed, and candidate species, and are discussed below. A monitoring program (219.12) is also an important contributor to the conservation program and must be developed as part of the planning process for a new plan or revision, and is discussed below. A biennial evaluation of the monitoring information must be conducted and written report of the evaluation issued and made available to the public.

One gap in the process from our viewpoint is the lack of an explicit requirement to conduct section 7(a)(1) consultations on all new and revised plans and, where appropriate, amendments. We have discussed this during the course of our consultations with USFS staff and been assured that the USFS intends to conduct section 7(a)(1) consultations when developing and revising land management plans. However, we believe it's worth reiterating here that this is the most critical point at which to conduct a 7(a)(1) consultation and, to ensure that this is done across the nation, all NFS units should be given this direction. The NFS unit is the level at which conservation programs for specific species in specific geographical areas are most appropriately developed because these units are small enough to develop detailed plans and priorities, but not so small (as they would be at a project-specific level) that options are constrained and the bigger picture lost.[see recommendation] Consulting under 7(a)(1) at this stage would both 1) assure long-term conservation of species by consulting on species-specific needs in the context of the NFS unit (or possibly a larger landscape) and using all expertise available to do so, and 2) assure that financial and staff resources are most effectively used by avoiding conflicts and missed opportunities in the future.

- 2) Is the program (via its requirements) designed in such a way that it will guide future new and revised land management plans to improve the status of these species and their habitats, where authorities permit?

With regard whether the program is designed in such a way that it will improve the status of these species and their habitats, the planning rule addresses this mainly through requirements for plan components, including ecological sustainability; and plant and animal diversity; and monitoring. All plans must include components "to maintain or restore ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area" in accordance with sustainability section. This includes ecosystem integrity (structure, function, composition, and connectivity) for both terrestrial and aquatic ecosystems; air, soil and water quality and resources; and integrity and management of riparian areas. The latter includes water temperature or chemical composition; blockages of water courses; deposits of sediment; aquatic and terrestrial habitats; ecological connectivity and species movement; and restoration needs.

Plans must also maintain the “diversity of plant and animal communities and the persistence of native species present in the plan area”. This includes components that maintain or restore key characteristics associated with terrestrial and aquatic ecosystem types, rare aquatic and terrestrial plant and animal communities, and the diversity of native tree species similar to that existing in the plan area. When components that address ecosystem integrity and ecosystem diversity are “insufficient to provide the ecological conditions necessary to contribute to the recovery of federally listed threatened and endangered species...”, then additional, species-specific plan components, including standards or guidelines, must be developed to provide such ecological conditions in the plan area”.

Generally, the combination of this “coarse filter,” which maintains and restores ecosystem conditions as specified above, and “fine filter,” which requires additional species-specific plan components for listed species that are not sufficiently provided for via the ecosystem components, is a useful and effective approach to ensuring healthy, whole ecosystems while providing for the needs of listed species. However, we note that there may be cases in which providing “ecological conditions” alone, even when broadly interpreted, is not adequate for recovery of a listed species. For instance, a species may need to be reestablished or its numbers augmented in the area, or a predator, even if natural, may need to be controlled until numbers are sufficient to withstand predation. We recommend below that the need for active management for species may be needed and that this be noted in directives implementing the planning rule.

- 3) Is the program designed in such a way as to ensure that it will not contribute to the decline of listed, proposed, and candidate species or their habitats, and will not cause net loss of habitat of these species or diminution of their conservation status?

With regard to whether the program is designed in such a way that it will not contribute to the decline of listed, proposed, and candidate species or their habitats, and will not cause net loss of habitat of these species or diminution of their conservation status, this would be highly unlikely if the planning rule is followed. The process and direction of the planning rule ensures that all species are considered and their needs addressed first through the “coarse filter” of maintaining or restoring ecosystem integrity; air, soil and water resources; riparian areas; and diversity of plant and animal communities and persistence of native species. If that is not sufficient, their needs must be addressed through the “fine filter” which specifically calls for adding additional species-specific components to the plan to provide ecological conditions necessary to contribute to the recovery of federally listed species and conserve proposed and candidate species (see our concern with “ecological conditions” wording, above). The process, including coordination with other agencies and the public who may act as a check on whether these species are adequately considered, the regular assessment and revision of plans, and the requirement for monitoring of listed species, also assists in assuring that decline of species or habitat will not happen. In addition, if section 7(a)(1) consultations are conducted during each NFS unit planning process, this is even less likely. As such, the rule leaves little room to contribute to the decline of a species or its habitat through either neglect or actions that would cause harm.

- 4) Will the program provide a feedback and monitoring loop to ensure it’s possible to ascertain management effectiveness and/or progress toward achieving conservation goals, whether they’re landscape scale or management of species or populations?

With regard to the fourth question of whether a conservation program will provide a feedback and monitoring loop to ensure it’s possible to ascertain management effectiveness and/or progress toward achieving conservation goals, each land management plan must also include a monitoring program which sets out the land management plan

monitoring questions and associated indicators. Monitoring questions and associated indicators must be designed to inform the management of resources in the plan area, including by testing relevant assumptions, tracking relevant changes, and measuring management effectiveness and progress toward achieving or maintaining desired conditions or objectives. Each monitoring program must contain one or more monitoring questions and associated indicators addressing the status of focal species to assess the ecological conditions required under § 219.9 (219.12(a)(5)(iii)); the status of ecological conditions required under § 219.9 to contribute to the recovery of federally listed threatened and endangered species; conserve proposed and candidate species; and maintain a viable population of each species of conservation concern within the plan area (219.12(a)(5)(iv); and the measurable changes on the plan area related to climate change and other stressors on the plan area (219.12(a)(5)(vi). We believe that these requirements are adequate to ascertain management effectiveness and/or progress toward achieving conservation goals.

### **NMFS Recommendations for Further Conservation**

We believe that the procedures and plan component requirements in this planning rule generally provide a solid basis for the conservation of listed, proposed and candidate species, and will help provide consistency in the treatment of species across the wide range of units within the NFS. While this planning rule and accompanying programmatic consultation necessarily lack specificity in plan content and thus in conservation programs for given species, it appears to be an appropriate first step in ensuring that the needs of listed species are considered in forest planning processes. That said, we see two gaps in the planning rule that would potentially derail the formulation of adequate conservation programs for species within the NFS. Incorporation of the two recommendations below will help to maximize meeting these needs.

First, we recommend that section 7(a)(1) consultations be undertaken at all units during land management planning, and that this be required in future directives. The rule does not mention conducting 7(a)(1) consultations, per se, on new and revised versions of land management plans. Yet, we believe that this is the most suitable place to address the needs of listed, candidate and proposed species with an appropriate level of specificity while still ensuring the needs of the population(s) on the landscape are being met (i.e., that it is not on a specific project level which wouldn't necessarily plan for the needs of the species beyond the action area). Consultation with NMFS biologists during development of the land management plan can be useful in discussing priorities for given species, ensuring that the Forest is complementing other ongoing efforts, and finding solutions that may not arise in the course of very focused section 7(a)(2) consultations or other circumstances. While we recognize the myriad conservation efforts that have taken place in the past and are ongoing, and that they came about through less formal processes than a 7(a)(1) consultation, we highly recommend that directives implementing the planning rule include conducting section 7(a)(1) consultations on land management plans.

Second, we recommend that directives interpreting the rule further include some discussion of the need to sometimes take steps that are needed to conserve the species beyond providing ecological conditions. The rule focuses very much on ecosystem processes and conditions on forests, as well as ecological diversity. This is appropriate in many cases. However, we note that the "fine filter" species-specific plan components also focus strictly on providing "ecological conditions" to contribute to conservation of these species. While we believe this may be adequate in some cases, some species' unique and dire circumstances may require more than adequate ecological conditions, but also active management of the species, a threat or some aspect of its habitat that is not strictly an ecological condition. In our discussions, this seemed to be understood, and we do recognize that the USFS actively manages for listed species in numerous forests and that taking such actions will be up to the

discretion of the NFS unit. However, we would like to see support in this planning rule for active management when necessary.

### **Conclusion**

We appreciate that the USFS recognizes the special obligation of Federal agencies outlined in section 7(a)(1) to utilize their authorities to carry out programs for the conservation of species listed under the ESA and to consult with NMFS and FWS in doing so. Section 7(a)(1) consultations are not static but an ongoing process. The USFS, through the NFS, has the potential to contribute significantly to the conservation of many listed species, as well as proposed and candidate species and other at-risk species. Indeed, some of this potential has already been realized. We hope to build on this through section 7(a)(1) consultations on future land management plans, in addition to regular communication and coordination between our agencies at each NFS unit, as well as in Regional and Headquarters offices.