

1                                   ESA Consultation Agreement Between  
2                                   The U.S. Bureau of Land Management (BLM);  
3                                   The U.S. Fish and Wildlife Service (FWS); and  
4                                   The National Marine Fisheries Service (NMFS)<sup>1</sup>

5  
6    **A. Purpose**

7    This agreement establishes a cooperative process upon which Endangered Species Act (ESA)  
8    Section 7 consultation for the Western Oregon Resource Management Plan revision (Plan  
9    Revision) will be conducted by the U.S. Bureau of Land Management (BLM), the Oregon State  
10   Office of the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service  
11   (NMFS) (collectively referred to herein as the “signatory agencies” or “signatories”). This  
12   agreement ties to and builds on responsibilities and commitments for each agency as outlined  
13   in:

- 14       1. The interagency agreement for streamlining Section 7 consultation in the Pacific  
15       Northwest revised as of July 1999; and  
16       2. The “*Memorandum of Understanding Between the United States Department of the*  
17       *Interior, United States Department of Agriculture, and United States Department of*  
18       *Commerce on BLM Forest Management in Western Oregon of September, 2010.*”

19   This agreement further defines the process, products, actions, timeframe, and expectations of  
20   BLM, FWS, and NMFS to complete Section 7 consultation. Early coordination on the  
21   Biological Assessments (BAs) associated with the Plan Revision are expected to result in a  
22   shortened timeframe for the completion of Biological Opinions (BiOps) once the BAs have  
23   been received by the FWS and NMFS.

24   The signatory agencies:

- 25       1. Are committed to sharing technical information as BLM goes through its planning effort  
26       that will result in a Record of Decision(s) [ROD(s)] and a Plan Revision for Western  
27       Oregon. Sharing knowledge and awareness of both the ESA and Plan Revision  
28       framework among the three entities will enhance consultation efforts for resource  
29       management, protection and recovery of threatened, endangered, and proposed (TEP)  
30       species;  
31       2. Will informally and formally consult/confer on listed and proposed species and  
32       designated and proposed critical habitat.  
33       3. Will consider the Framework to Guide Forest Service and Bureau of Land Management  
34       Land Use Plan Amendments and Revisions (March, 2011) in this process; and  
35       4. Are committed to early coordination, in effect, engaging in informal consultation prior  
36       to development of a Draft Environmental Impact Statement (See 50 § CFR 402.13).

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<sup>1</sup>The U.S. Forest Service (USFS) and the Environmental Protection Agency (EPA) do not have a direct role in the ESA Consultation process, but do have parallel interests and responsibilities. The roles of USFS and EPA are defined in Section D.6 of this agreement.

37 The BLM is committed to working with the FWS and NMFS to address the needs of listed and  
38 proposed species and designated critical habitat early in the plan revision process. The process  
39 outlined in this Consultation Agreement will provide ESA Section 7(a)(2) consultation and  
40 early coordination to support completion of the BAs associated with the Plan Revision, and the  
41 subsequent BiOps to be issued by FWS and NMFS.

## 42 **B. Authorities**

### 43 1. BLM authorities.

- 44 a. The authorities of the BLM to enter into and engage in the activities described  
45 within this Consultation Agreement include, but are not limited to:
  - 46 i. National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.).
  - 47 ii. Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1701 et seq.).
  - 48 iii. The Oregon & California Lands Act of 1937 (43 U.S.C. § 1181(a) et seq.).
  - 49 iv. Endangered Species Act of 1973 as amended (16 U.S.C. § 1531 et seq.).
- 50 b. Regulations implementing the above authorities:
  - 51 i. Council on Environmental Quality regulations (40 C.F.R. § 1501 et seq.)
  - 52 ii. Bureau of Land Management planning regulations (43 C.F.R. § 1601 et seq.)
  - 53 iii. Endangered Species Act regulations (50 C.F.R. § 402 et seq.).

### 54 2. FWS Authorities.

- 55 a. The authorities of FWS to enter into and engage in the activities described within  
56 this Consultation Agreement include, but are not limited to:
  - 57 i. National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.).
  - 58 ii. Endangered Species Act of 1973 as amended (16 U.S.C. § 1531 et seq.).
  - 59 iii. Fish and Wildlife Coordination Act of 1934 as amended (16 U.S.C. §§ 661-667e;  
60 48 Stat. 401 et seq.).
- 61 b. Regulations implementing the above authorities:
  - 62 i. Council on Environmental Quality regulations (40 C.F.R. § 1501 et seq.).
  - 63 ii. Endangered Species Act regulations (50 C.F.R. § 402 et seq.).

### 64 3. NMFS Authorities.

- 65 c. The authorities of the NMFS to enter into and engage in the activities described  
66 within this MOU include, but are not limited to:
  - 67 i. National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.).
  - 68 ii. Endangered Species Act of 1973 as amended (16 U.S.C. § 1531 et seq.).
  - 69 iii. The Magnuson-Stevens Fisheries Conservation and Management Reauthorization  
70 Act of 2006 (16 U.S.C. § 1801 et seq.).
  - 71 iv. Fish and Wildlife Coordination Act of 1934 as amended (16 U.S.C. §§ 661-667e;  
72 48 Stat. 401 et seq.).

- 73 d. Regulations implementing the above authorities:
- 74 i. Council on Environmental Quality regulations (40 C.F.R. § 1501 et seq.).
- 75 ii. Endangered Species Act regulations (50 C.F.R. § 402 et seq.).
- 76 iii. Magnuson-Stevens Fisheries Conservation and Management Act regulations (50
- 77 C.F.R. § 600 et seq.).

78 **C. The Proposed Federal Action**

79 The action for which the formal 7(a)(2) ESA consultation will be completed is the Plan

80 Revision. The current schedule calls for completion of the ROD(s) for the Plan Revision in the

81 fall of 2015. The parties agree that the final BiOps will be signed before or coincidental with

82 the ROD(s), provided prior milestones in the consultation timeline<sup>2</sup> have been met.

83 The Plan Revision will be developed and alternatives identified through a National

84 Environmental Policy Act (NEPA) process. The land use planning effort and the concurrent

85 NEPA process both require and define opportunities for public review. ESA Consultation does

86 not include a public review component. As such, the ROD(s) for the Plan Revision will be

87 informed by the Final Environmental Impact Statement (FEIS) and the ESA section 7

88 consultation, but the Plan Revision may, within the range of alternatives considered in the

89 FEIS, be different from any particular alternative described in the FEIS.

90 The action to be addressed by this consultation is the BLM's Plan Revision. Consequently, this

91 consultation will occur at the plan level and will not determine all future actions to the site-

92 specific level of detail. Many or most actions that may occur in the future consistent with the

93 management direction in the Plan Revision will undergo subsequent site-specific consultation

94 to address site-specific effects to TEP species. The signatories will work together to determine

95 the information necessary for this plan level consultation including, as appropriate, projections

96 of effects and/or sideboards.

97 Signatories agree this is a multi-year consultation effort where later steps in the process will

98 build upon earlier steps. Hence, active involvement by the signatories throughout the process is

99 important. The signatories will strive to develop a clear written record of the discussions along

100 the way so that issues can be clearly identified, elevated if necessary, and to the extent possible

101 resolved in a timely manner.

102 **D. Operations**

103 1. The BLM Agrees to:

- 104 a. Participate in interagency meetings and teams described in the "ESA Consultation
- 105 Team Roles and Responsibilities"<sup>3</sup> document, which is incorporated by reference as
- 106 part of this Consultation Agreement. The process is intended to provide timely

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<sup>2</sup> BLM, FWS and NMFS have prepared document titled "Integrated NEPA and ESA Timeline". This document is incorporated by reference. It is a working document, and is subject to change with agreement from the signatory agencies and in coordination with the EPA and the USFS.

<sup>3</sup> BLM, FWS and NMFS have prepared document titled "ESA Consultation Team Roles and Responsibilities". This document is incorporated by reference. It is a working document, and is subject to change with agreement from the signatory agencies and in coordination with the EPA and the USFS.

- 107 coordination between the land use planning process, the NEPA process and the ESA  
108 consultation process. BLM will share information regarding the Framework to  
109 Guide Forest Service and Bureau of Land Management Land Use Plan Amendments  
110 and Revisions (dated March, 2011) and other pertinent guidance documents. BLM  
111 will describe the expected effects of its proposed action on TEP species and their  
112 designated critical habitats, including the relationship between the Plan Revision  
113 and the Northwest Forest Plan Aquatic Conservation Strategy (ACS).
- 114 b. Provide resource specialists to be members of the Plan Level Technical Team  
115 identified in “ESA Consultation Team Roles and Responsibilities” document. These  
116 resource specialists will participate in assessing effects and developing the ESA  
117 Section 7(a)(2) BAs through the consultation process. BLM will lead efforts to  
118 conduct modeling and analyses that contribute to the analysis of effects to TEP  
119 species and critical habitat, and will do so in cooperation with FWS and/or NMFS.  
120 Any contracting with outside entities will be coordinated and paid for by BLM,  
121 unless other written agreements regarding funding are made beforehand.
- 122 c. Develop and submit separate BAs to the FWS and NMFS, each analyzing the effects  
123 of the proposed Plan Revision on TEP species and their associated critical habitats  
124 under the jurisdiction of FWS and NMFS, respectively. Each BA will focus on the  
125 needs of the consulting agencies based on their respective jurisdiction.
- 126 d. To the extent required by 50 C.F.R. § 402.14 (“Formal Consultation”) or otherwise  
127 to the extent practicable, provide supplementary information requested by the  
128 consulting agencies during consultation (See D.4, below).
- 129 e. Provide Leads for teams described in the “ESA Consultation Team Roles and  
130 Responsibilities document.” The responsibility of the Team Lead is to: convene  
131 team meetings; work with team members to prepare agendas; provide team  
132 members with appropriate meeting materials in advance of meetings; maintain a  
133 record of team decisions; coordinate with specialists from the other agencies for  
134 information needs and necessary analyses; and ensure required team products are  
135 completed on time.
- 136 f. Provide neutral facilitation support for any teams, processes, or to address specific  
137 issues as funding allows.
- 138 2. The FWS NMFS agree to:
- 139 a. Participate in interagency meetings and teams described in the “ESA Consultation  
140 Team Roles and Responsibilities” document. The process is intended to provide  
141 timely coordination between the land use planning process, the NEPA process and  
142 the ESA consultation process. FWS and NMFS participation will promote an  
143 understanding of the conservation and recovery needs of TEP species and their  
144 designated critical habitat.
- 145 b. As detailed in the “Integrated NEPA and ESA Timeline”, identify documents and  
146 information/analysis needed to support the analysis and development of alternatives  
147 for the Plan Revision and the NEPA process. *See also* Cooperating Agency MOUs  
148 approved by the signatories regarding the Plan Revisions.
- 149 c. Provide resource specialists to the Plan Level Technical Team, who will provide  
150 technical assistance in development of the ESA Section 7 BAs.

- 151 d. Provide informal review of draft BAs as they are developed by the BLM.
- 152 e. Provide a written indication as to whether the BAs contain all of the information  
153 needed to initiate and complete consultation. The consulting agencies will strive to  
154 complete this written indication within 30 days of receipt of the BAs.
- 155 f. Strive to meet the 135-day formal consultation timeframe, acknowledging there will  
156 be multiple levels of review of the draft BiOp.
- 157 g. Strive to provide a draft of their draft BiOps for BLM review no later 30 days before  
158 the end of any agreed upon consultation period.
- 159 h. Discuss any reasonable and prudent measures and terms and conditions for  
160 incidental take with BLM prior to issuance of a final BiOps.
- 161 i. Prepare separate individual BiOps (FWS and NMFS) dealing with terrestrial and  
162 aquatic species under their respective ESA jurisdiction and any necessary additional  
163 conference reports on the effects of the Plan Revision to TEC species and any  
164 proposed or designated critical habitat.
- 165 3. The BLM, FWS and NMFS mutually agree to:
- 166 a. Participate in the ESA Section 7 consultation process through a series of teams  
167 described in the “ESA Consultation Team Roles and Responsibilities” document.  
168 The “ESA Consultation Team Roles and Responsibilities” document contains the  
169 procedures and structure for ongoing interagency coordination. The structure and  
170 process may be revised as needed based on further written agreements of the  
171 signatory agencies. However, specific members assigned to the teams by signatory  
172 agencies can be changed without the agreement of the other signatory agencies. The  
173 teams and procedures outlined in the “ESA Consultation Team Roles and  
174 Responsibilities” document are intended to enhance coordination and understanding  
175 between BLM, FWS and NMFS, including cooperation on the content of  
176 programmatic documents, consultation requirements and the changes outlined in the  
177 proposed Plan Revisions.
- 178 b. Strive to resolve scientific concerns that arise during early consultation in a  
179 timeframe that allows for these issues to be resolved and presented in a manner  
180 satisfactory to the signatories to this agreement.
- 181 4. The BLM, FWS and NMFS mutually agree that the contents of the BAs shall include:
- 182 a. All anticipated environmental effects of the Plan Revision on TEP species or  
183 designated or proposed critical habitat, inclusive of the effects of proposed  
184 sideboards, conservation, mitigation, minimization and monitoring measures that are  
185 part of the Plan Revision.
- 186 i. The Plan Level Technical Team will help identify the level of documentation  
187 needed for the BAs as described in section D.4.a above. Coordination  
188 requirements and conservation measures, including sideboards, will be  
189 identified early in the decision making process so they can be incorporated  
190 into the plan under consultation, as appropriate.
- 191 b. A description of the action, which can be a reference to the description of the  
192 proposed action in the Plan Revision, along with references to documents as needed.

- 193 c. A description of the specific area that may be directly or indirectly affected by the  
194 action (i.e. action area). As above, reference can be made to the appropriate section  
195 in the Plan Revision if it comports with the ESA definition of action area.
- 196 d. A description of any listed or proposed, or designated or proposed critical habitat  
197 that may be affected;
- 198 e. Any other relevant information including the best scientific and commercial data  
199 available or which can be obtained during the consultation for an adequate review of  
200 the effects that the action may have on the TEP species and designated/proposed  
201 critical habitat (50 C.F.R. § 402.14(d)).
- 202 f. A description of the manner in which the action may affect TEP species or proposed  
203 or designated critical habitat, including direct effects; an analysis of cumulative  
204 effects and an analysis of effects interrelated and interdependent actions.
- 205 g. The BAs may include a description of measures to minimize adverse effects of the  
206 proposed action.
- 207 h. The BLM (the action agency) will prepare the BAs based on the above principles in  
208 the cooperative spirit of this Consultation Agreement and will submit them to  
209 NMFS and FWS (the consulting agencies).
- 210 i. The BLM, NMFS and FWS have a mutual goal to reach agreement that BAs are  
211 adequate for consultation. If NMFS and FWS have concerns about the BAs after  
212 they have been submitted, they will contact BLM as soon as possible and will strive  
213 to do this within 30 days of transmission of the BAs. The BLM, NMFS and FWS  
214 will discuss how to resolve those concerns.
- 215 j. If additional information is needed to meet the information requirements for  
216 initiating formal consultation pursuant to the requirements of 50 C.F.R. § 402.14,  
217 the BLM shall provide that information consistent with 50 C.F.R. § 402.14 as soon  
218 as possible so that formal consultation may be initiated. With regard to any  
219 additional data requested by the FWS and NMFS, the BLM shall provide such data  
220 to the extent practicable.
- 221 k. Any member of the Senior Manager's Team may elevate issues to the Regional  
222 Issues Team using the process outlined in Section E, "Roles and Responsibilities,"  
223 below.
- 224 5. Role of U.S. Forest Service (USFS) and the Environmental Protection Agency (EPA)
- 225 a. The USFS and the EPA do not have a direct role in the ESA Consultation process.  
226 They do have parallel interests and responsibilities. For this reason, the USFS and  
227 EPA have been invited to actively participate as non-signatory agencies. This allows  
228 USFS and EPA to provide advice and guidance throughout the process, and to  
229 indicate implications for their agencies of processes adopted and agreements  
230 reached by the signatory agencies.
- 231 b. The EPA is invited to participate in the Senior Managers Team and to have a limited  
232 role on the Plan Level Technical Team (See section E below for descriptions of  
233 these teams). For the EPA, representation on the Senior Managers Team will be in  
234 an advisory/coordination capacity related to development of plan aquatic  
235 conservation strategies that might address both ESA and Clean Water Act

236 (CWA)/Safe Drinking Water Act (SDWA) goals. The EPA's role on the Plan Level  
237 Technical Team is to be focused on plan strategies related to water quality.

238 c. USFS is invited to participate in the Senior Managers Team and to have a limited  
239 role on the Plan Level Technical Team (See section E below for descriptions of  
240 these teams). For USFS, representation on the Senior Managers Team will be in an  
241 advisory/coordination capacity related to development of forest planning and forest  
242 practices, and implications for this plan regarding USFS responsibilities and  
243 planning requirements. USFS's role on the Plan Level Technical Team is to be  
244 focused on plan strategies related to forest management.

245 **E. Roles and Responsibilities** <sup>4</sup>

246 1. The Plan Level Technical Team (~Level 1 Team) will consist of specialists from BLM,  
247 NMFS and FWS. The EPA and USFS resource specialists may also participate, as  
248 development of the Plan Revision may have direct or indirect impacts on programs  
249 administered by these agencies outside of this ESA consultation process.

250 2. The Consultation Oversight Team (~Level 2 Team) will consist of an appointed  
251 representative of regional leadership from the BLM, NMFS and FWS. EPA and USFS  
252 representatives appointed regional management may also participate. This team is the  
253 first level decision maker for guidance and dispute resolution for issues elevated from  
254 the Plan Level Technical Team.

255 3. The Senior Managers Team will consist of regional and/or state managers from BLM,  
256 NMFS and FWS, and will provide overall guidance for the process and is the decision  
257 maker for guidance and dispute resolution for issues elevated from the Consultation  
258 Oversight team. EPA and USFS senior managers may also participate.

259 4. The Regional Issue Resolution Team will consist of regional Executives from BLM,  
260 NMFS and FWS. EPA and USFS executive managers may also participate. The  
261 regional office of the BLM will convene this Team as needed. This team is the decision  
262 maker for guidance and dispute resolution for issues of regional significance elevated  
263 from the Senior Managers Team.

264 5. The National Issue Resolution Team includes the Federal directors for BLM, NMFS  
265 and FWS, or their designees at the federal level. EPA and USFS Directors may also  
266 participate. The Department of Interior will convene this group as needed. This team is  
267 the decision maker for guidance and dispute resolution for issues of national  
268 significance elevated from the Senior Managers Team or Regional Issue Resolution  
269 Team.

270 6. The Attorney Group consists of the counsel for BLM, the FWS, the National Oceanic  
271 and Atmospheric Administration (NOAA) the Department of the Interior (DOI)The  
272 Solicitor's Office within the Department of the Interior will provide the Lead for this  
273 group. EPA and United States Department of Agriculture (USDA) counsel may also  
274 participate. This group will meet as needed or requested to provide guidance on issues

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<sup>4</sup> These roles and responsibilities are more fully described the "ESA Consultation Team Roles and Responsibilities" document prepared by BLM, FWS and NMFS. This document is incorporated by reference. It is a working document, and is subject to change with agreement from the signatory agencies and in coordination with the EPA and the USFS.

275 of legal significance. Whenever possible, and without violating the attorney-client  
276 relationship, the Attorney Group will strive to present options for resolving policy or  
277 legal issues in a manner that meets the interests and approaches of all the signing  
278 agencies.

279 Members of this group represent separate client agencies and have differing legal  
280 responsibilities; it is understood that individual agencies will continue to coordinate  
281 with their legal counsel as needed, independent from this group.

282 **F. Additional Stipulations**

- 283 1. Modifications. Changes within the scope of this instrument shall be made by the  
284 issuance of an executed written modification agreed to by the signatories to the  
285 agreement.
- 286 2. Freedom of Information Act (FOIA). Any information furnished to the agencies under  
287 this instrument is subject to FOIA (5 U.S.C. § 552). Responses and release of  
288 documents will be coordinated among the agencies, but each agency will retain  
289 authority to determine release of documents it has authored. If a FOIA request is made  
290 of BLM and any other federal agency, BLM will be the lead for coordinating FOIA  
291 responses.
- 292 3. Termination. Any one of the parties, in writing, may terminate their portion of the  
293 instrument in whole, or in part, at any time before the date of expiration as long as they  
294 give a 60-day notice prior to termination.
- 295 4. Participation in Similar Activities. This instrument in no way restricts the signatory  
296 agencies from participating in similar activities with other public or private agencies,  
297 organizations, or individuals.
- 298 5. Completion Date. This instrument is executed as of the date of last signature and, unless  
299 sooner terminated or extended, is effective through December 31, 2015, at which time it  
300 will expire.
- 301 6. Nonfund Obligating Document. This instrument is neither a fiscal nor a funds obligation  
302 document. Any endeavor or transfer of anything of value involving reimbursement of  
303 contribution of funds between the parties to this instrument will be handled in  
304 accordance with applicable laws, regulations, and procedures, including those for  
305 Government procurement and printing. Such endeavors will be outlined in separate  
306 agreements that shall be made in writing by representatives of the parties and shall be  
307 independently authorized by appropriate statutory authority. This instrument does not  
308 provide such authority. Specifically, this instrument does not establish authority for  
309 noncompetitive award to the cooperator of any contract or other agreement. Any  
310 contract or agreement for training or other services must fully comply with all  
311 applicable requirements for competition.

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313 [signatures on following page]

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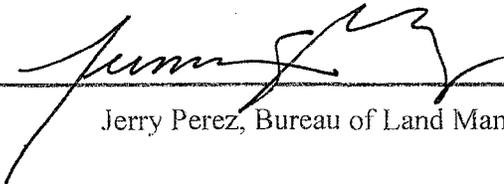
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319 G. Signatory Agency Signatures:

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\_\_\_\_\_  
Jerry Perez, Bureau of Land Management State Director,  
Oregon

June 18, 2013.  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
William Stelle, NOAA Fisheries Regional Administrator,  
Northwest Region

6/14/2013  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Robyn Thorson, U.S. Fish and Wildlife Service Regional Director  
Pacific Region,

6/18/2013  
\_\_\_\_\_  
Date

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