

***NATIONAL MARINE FISHERIES SERVICE INSTRUCTION 02-301-08  
JULY 1, 1994***

***Protected Resources Management  
MOAs/MOUs/COOPERATIVE AGREEMENTS/  
INTER-AGENCY COOPERATIVE POLICIES***

***ENDANGERED AND THREATENED WILDLIFE AND PLANTS:  
NOTICE OF INTERAGENCY COOPERATIVE POLICY FOR  
PEER REVIEW IN ESA ACTIVITIES***

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**OPR:** F/PR

**Certified by:** F/PR

**Type of Issuance:** Renewed jan 2010

***SUMMARY OF REVISIONS:***

Signed \_\_\_\_\_  
[Approving Authority name] Date  
[Approving Authority title]

[Federal Register: July 1, 1994]

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Part VIII

Department of the Interior  
Fish and Wildlife Service

Department of Commerce  
National Oceanic and Atmospheric Administration

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Endangered and Threatened Wildlife and Plants: Policy Statements;  
Notices

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 for Peer Review 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.

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SUMMARY: The Fish and Wildlife Service and National Marine Fisheries  
Service (hereafter referred to as Services) announce interagency policy  
to clarify the role of peer review in activities undertaken by the  
Services under authority of the Endangered Species Act of 1973 (Act),  
as amended, and associated regulations in Title 50 of the Code of  
Federal Regulations. This policy is intended to complement and not  
circumvent or supersede the current public review processes in the  
listing and recovery programs.

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, D.C. 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 Act requires the Services to make biological decisions based upon the best scientific and commercial data available. These decisions involve listing, reclassification, and delisting of plant and animal species, critical habitat designations, and recovery planning and implementation.

The current public review process involves the active solicitation of comments on proposed listing rules and draft recovery plans by the scientific community, State and Federal agencies, Tribal governments, and other interested parties on the general information base and the assumptions upon which the Service is basing a biological decision.

The Services also make formal solicitations of expert opinions and analyses on one or more specific questions or assumptions. This solicitation process may take place during a public comment period on any proposed rule or draft recovery plan, during the status review of a species under active consideration for listing, or at any other time deemed necessary to clarify a scientific question.

Independent peer review will be solicited on listing recommendations and draft recovery plans to ensure the best biological and commercial information is being used in the decisionmaking process, as well as to ensure that reviews by recognized experts are incorporated into the review process of rulemakings and recovery plans developed in accordance with the requirements of the Act.

##### Policy

A. In the following endangered species activities, it is the policy of the Services to incorporate independent peer review in listing and recovery activities, during the public comment period, in the following manner:

###### (1) Listing

(a) Solicit the expert opinions of three appropriate and independent specialists regarding pertinent scientific or commercial

data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information for species under consideration for listing;

(b) Summarize in the final decision document (rule or notice of withdrawal) the opinions of all independent peer reviewers received on the species under consideration and include all such reports, opinions, and other data in the administrative record of the final decision.

## (2) Recovery

(a) Utilize the expertise of and actively solicit independent peer review to obtain all available scientific and commercial information from appropriate local, State and Federal agencies; Tribal governments; academic and scientific groups and individuals; and any other party that may possess pertinent information during the development of draft recovery plans for listed animal and plant species.

(b) Document and use, where appropriate, independent peer review to review pertinent scientific data relating to the selection or implementation of specialized recovery tasks or similar topics in draft or approved recovery plans for listed species.

(c) Summarize in the final recovery plan the opinions of all independent peer reviewers asked to respond on an issue and include the reports and opinions in the administrative record of that plan.

Independent peer reviewers should be selected from the academic and scientific community, Tribal and other native American groups, Federal and State agencies, and the private sector; those selected have demonstrated expertise and specialized knowledge related to the scientific area under consideration.

## B. Special Circumstances

(1) Sometimes, specific questions are raised that may require additional review prior to a final decision, (e.g. scientific disagreement to the extent that leads the Service to make a 6-month extension of the statutory rulemaking period). The Services will determine when a special independent peer review process is necessary and will select the individuals responsible for the review. Special independent peer review should only be used when it is likely to reduce or resolve the unacceptable level of scientific uncertainty.

(2) The results of any special independent peer review process will be written, entered into the permanent administrative record of the decision, and made available for public review. If the peer review is in the context of an action for which there is a formal public comment period, e.g., a listing, designation of critical habitat, or development of a recovery plan, the public will be given an opportunity to review the report and provide comment.

## Scope of Policy

The scope of this policy is Servicewide for all species of fish and wildlife and plants, as defined pursuant to section 3 of the Act (16 U.S.C. 1532).

## Authority

The authority for this policy is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544).

Dated: June 27, 1994.  
Mollie H. Beattie,  
Director, U.S. Fish and Wildlife Service, Department of the Interior.

Dated: June 24, 1994.  
Rolland A. Schmitten,  
Assistant Administrator for Fisheries, National Marine Fisheries  
Service.  
[FR Doc. 94-16021 Filed 6-30-94; 8:45 am]  
BILLING CODE 4310-55-P