



SECTION 7 CONSERVATION

Interagency Cooperation in the 21st Century

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Endangered Species Act of 1973

Section 2(b) Purposes -

...to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved...

...to provide a program for the conservation of such ...species, ...



Endangered Species Act of 1973

Section 2(c) Policy -

It is ... the policy of Congress that **all Federal departments and agencies shall** seek to *conserve E&T species and shall use their authorities in furtherance of this purpose.*



119 Cong. Rec. 42913 (1973)

"The purposes of the bill included the conservation of the species and of the ecosystems upon which they depend, and **every agency of government is committed** to see that those purposes are carried out. . . . [T]he agencies of Government can no longer plead that they can do nothing about it. They can, and they must. **The law is clear.**"



Section 7

Interagency Cooperation

“ (All) Federal departments and agencies **shall . . .** with the assistance of the Secretary, **utilize their authorities** in furtherance of the purposes of [the] Act **by carrying out programs for the conservation of endangered species . . .** and by taking such action necessary to insure that **actions** authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary . . . to be critical.”



Supreme Court TVA v. Hill 1978

“...the legislative history undergirding 7 reveals an **explicit congressional decision to require agencies to afford first priority** to the declared national policy of saving endangered species.”

“...reveals a **conscious decision by Congress to give endangered species priority over the "primary missions"** of federal agencies.”



SECTION 7(a)(1)

(a)(1) ...**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...

Mandate and authority to prioritize and conserve listed species on a program level remained.



SECTION 7(a)(2)

Each Federal agency shall, in consultation with and with the assistance of the Secretary, **insure that any *action* ... is not likely to jeopardize** the continued existence of any endangered species or threatened species...or result in destruction...of (critical) habitat...

Focus on “actions”

- ***Avoid jeopardy/adverse mod***
- ***Minimize and authorize “take” incidental to Federal agency actions*** [section 7(b)(4)]



Consultations under section 7(a)(2) are concerned strictly with **facilitating** Federal **actions** within defined action areas.

Without positive conservation actions [7(a)(1)], successive section 7(a)(2) consultations may,

- erode a species baseline,
- progressively limit action agency management options, and,
- contribute to a future jeopardy call.



What is 7(a)(1)?

A programmatic strategy developed and implemented by Federal agencies (in concert with FWS/NMFS), outlining how their authorities can and will be used to contribute to the recovery of listed species.

- Planning
 - Avoidance
- Project design, techniques, and processes
 - Minimization
 - Benefits
- **Habitat rehabilitation**
- **Research** (information critical to management, i.e., “intelligence”)



Benefits to the Action Agencies

- *Controlled by the Action agency... flexibility in implementation;*
- Increased action agency awareness of the species baseline both within and beyond action areas;
- A reduction of regulatory surprises;
- Path to address ecological, status and trend data gaps;
- *Potential increase in the baseline of the species within the action agency footprint;*
- *Transform perception of Federal program from a “threat” into a conservation tool;*
- *Increased collaboration with other agencies, States, and NGOs;*
- ***More action agency control of the 7(a)(2) consultation process;***
- Path to justify appropriation requests for conservation actions through normal budgetary processes;
- Administrative record demonstrating compliance with the Act, as well as other Federal laws, regulations, and policies relative to ecosystem management.



Challenges to 7(a)(1) Conservation

- *Lack of guidance for 7(a)(1) conservation;*
- Cultures of “winning or losing/them vs. us;”
- Lack of experience, knowledge, or understanding of the purpose and benefits of section 7(a)(1) planning;
- Lack of sufficient information for informed decisions (status and trends of the listed species, or habitat and ecological data);
- Inability to maintain “institutional memory” throughout the process due to personnel shifts.



OPPORTUNITIES FOR INITIATING 7(a)(1) PLANNING AND PROGRAMS

- Existing Biological Opinions
- Biological Assessments
- Integrated Natural Resource Management Plans
- NEPA
- FWCA



Tools



Engineering With Nature

7(a)(1) and EWN may also be linked with other legal mandates and secondary missions

Migratory birds

Recreation

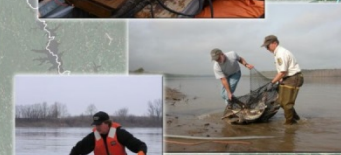
Ecosystem "Restoration"



<http://www.fws.gov/MississippiES/LMR.html>

Questions/Comments

LOWER MISSISSIPPI RIVER CONSERVATION



United States Department of the Interior
FISH AND WILDLIFE SERVICE

Lower Mississippi River
Strategic Habitat Conservation Plan

August 29, 2012

FOR MORE INFORMATION CONTACT:

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Conservation Plan for the Interior Least Tern, Pallid Sturgeon,
and Fat Pinktooth Noddy in the Lower Mississippi River
(Endangered Species Act, Section 7(a)(1))



July 22, 2013



BIOLOGICAL OPINION
TO
U.S. ARMY CORPS OF ENGINEERS
MISSISSIPPI VALLEY DIVISION
FOR
CHANNEL IMPROVEMENT PROGRAM
MISSISSIPPI RIVER AND TRIBUTARIES PROJECT
LOWER MISSISSIPPI RIVER

DATE:
12 DECEMBER 2013

PREPARED BY:
MISSISSIPPI FIELD OFFICE
U.S. FISH AND WILDLIFE SERVICE
JACKSON, MISSISSIPPI

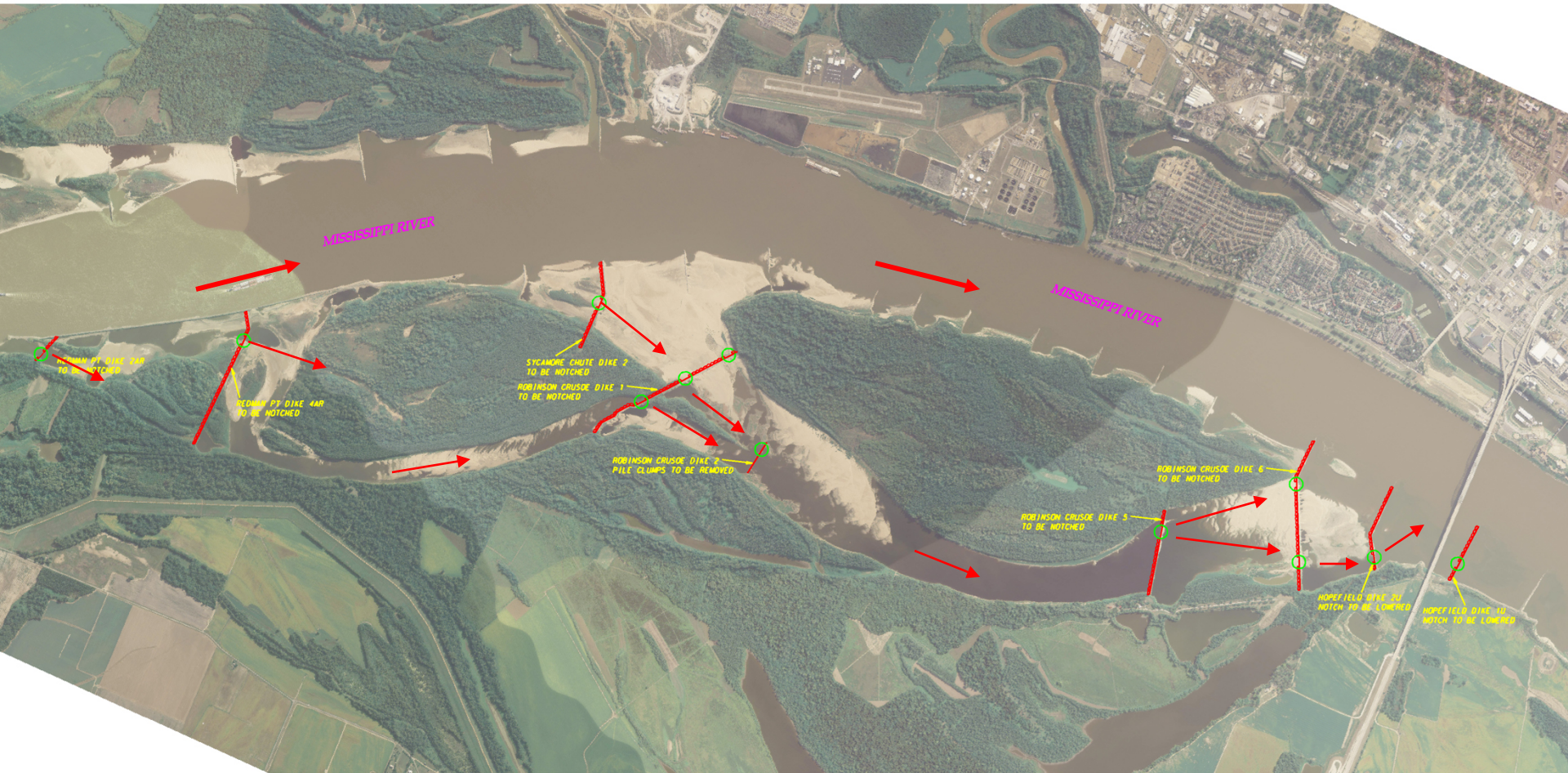




LAGNIAPPE

Examples of successful 7(a)(1) programs and actions benefitting USACE

LOOSA HATCHIE BAR AQUATIC HABITAT REHABILITATION



\$167,000 to improve flow, connectivity, and maintain island integrity in 11.25 mile reach



Mississippi Field Office

