



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
SOUTH PACIFIC DIVISION, CORPS OF ENGINEERS

333 Market Street, Room 923
San Francisco, California 94105-2195

Directorate of Engineering
& Technical Services

12 JAN 2000

Sandro Amaglio
Regional Environmental Officer
Federal Emergency Management Agency
Region IX
Presidio of San Francisco, Building 105
San Francisco, California 94129

Dear Mr. Amaglio:

Thank you for your letter of December 20, 1999 confirming the mutual understanding the Federal Emergency Management Agency (FEMA) Region IX and the U.S. Army Corps of Engineers (Corps) South Pacific Division (SPD), San Francisco, Sacramento and Los Angeles districts reached during our meeting with U.S. Fish & Wildlife Service (USFWS) staff on December 15, 1999, regarding lead Federal agency designation pursuant to Section 7 of the Endangered Species Act (ESA) of 1973, as amended. In your letter, you provided a written summary of the issues discussed and FEMA's understanding of agreements reached at our meeting.

As you know, due to the many natural disasters recently experienced in California, we have become more aware that proposed projects may be undertaken that are partially or wholly funded by FEMA and require a Department of the Army (DA) permit under Section 404 of the Clean Water Act of 1972, as amended, and/or Section 10 of the Rivers and Harbors Act of 1899. ESA implementing regulations at 50 CFR Section 402.07 state "when a particular action involves more than one Federal agency, the consultation and conference responsibilities may be fulfilled through a lead agency." In an effort to prevent overlapping consultations and conferences, it is my understanding that FEMA Region IX and the Corps (SPD and above referenced districts) have mutually agreed to the following lead Federal agency designations for purposes of compliance with Section 7 of the ESA.

- a. **FEMA's Hazard Mitigation Grant Program and the Project Impact and Flood Mitigation Program.** The intent of these programs is the prevention or mitigation of effects of damages due to future disasters or the elimination of long-term risks to people and property from natural hazards and their effects. Under these programs, projects are usually partially or entirely funded by FEMA. For projects eligible under these programs, FEMA is the designated lead Federal agency.

b. **FEMA's Public Assistance Program.** This is substantially a reimbursement program with the intent of reimbursing state and local governments for expenses incurred in the repair of existing facilities damaged during a Presidential-declared disaster. Recently, FEMA revised this program in the way it helps communities repair and rebuild facilities damaged during a declared disaster. The focus of the Public Assistance Program has changed to provide a higher level of customer service, emphasizing confidence and trust in the applicants. For purposes of lead Federal agency designation, we have generally divided the program into two categories: Small and Large Projects.

1. **Small Projects.** This category involves minor, in-kind repairs of a limited amount. The small project definition at 44 CFR Section 206.205(a), based on Section 422 of the Stafford Act, entitled "Simplified Procedures," authorizes FEMA to make contributions to eligible applicants on the basis of the approved Federal estimate, when such an estimate is less than \$35,000 or the equivalent amount adjusted to reflect CPI changes, currently \$48,900 for FY00. Each project worksheet completed by the applicant may include several sites for a total not to exceed the maximum allowed. FEMA may only become involved during the validation process, which ensures that the applicant has developed complete, accurate scopes of work, the work and costs included in the project worksheet are eligible for public assistance, and the cost estimates are accurate and reasonable. Typically, only 20% of an applicant's small projects are assessed in the validation process. This process may occur after the applicant has developed projects for all disaster-related work, and often after much of the work has been completed or are already underway. For this reason, our two agencies have mutually agreed the Corps will be the designated lead Federal agency for eligible small projects that require a DA permit, where the work requiring a DA permit would be completed prior to FEMA funding.
2. **Large Projects.** Large projects include work beyond the pre-disaster condition or for amounts over the small project threshold. In this situation, the Project Officer, working with the applicant, is responsible for developing the scope of work and cost estimate for a large project and submitting the project worksheet for review and processing. In most instances, FEMA would be involved in the project before the Corps, and may include a broader scope of analysis. Our two agencies mutually agreed FEMA would be the designated lead Federal agency.

We encourage you to continue coordination with USFWS, and the National Marine Fisheries Service as appropriate, to develop regional programmatic agreements or Biological Opinions for any FEMA-funded Small Projects which may effect listed threatened and endangered species of plants and wildlife. The Corps could even participate in programmatic consultations for those Small Projects which also require DA permits.

If you have any questions concerning our understanding of the meeting agreements, please contact Mr. Wade L. Eakle, Ecologist & Regulatory Program Manager for SPD at (415) 977-8030, by fax at (415) 977-8039/8047 or e-mail at weakle@spd.usace.army.mil.

Sincerely,


CARL R. POSTLEWATE, P.E.
Director, Engineering &
Technical Services

Copies furnished:

CECW-OR (Studt)
CESPK-CO-R (Champ)
CESPL-CO-R (Schubel)
CESPN-CO-R (Fong)
CEPOD-ET-C (Emmerson)
US Fish & Wildlife Service, CNO, Sacramento, CA
National Marine Fisheries Service, Long Beach, CA