United States Department of the Interior

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Memorandum

To: Regional Directors, Region 1, 2, 3, 4, 5, 6, and 7
Manager, California/Nevada Operations Office

From: Director /s/ Dale Hall

Subject: Recovery Units and Jeopardy Determinations under Section 7 of the Endangered Species Act

The purpose of this memorandum is to clarify the role of recovery units in making jeopardy determinations as part of interagency consultations conducted pursuant to Section 7(a)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). This subject is also addressed on pages 4-36 through 4-38 of the March 1998 edition of the Endangered Species Consultation Handbook.

"Recovery units" may be identified as part of the Recovery Planning process for listed species. This approach can be useful in addressing the conservation needs of a species when different populations face different threats or where the actions needed to address the threats may differ across the range of the species. Application of this approach is at the discretion of the Regional Director charged with lead responsibility for the recovery of the species.

It is important to recognize that the establishment of "recovery units" does not create a new listed entity. Jeopardy analyses, conducted as part of a section 7 consultation, must always consider the impacts of a proposed action on the survival and recovery of the species (as "species" is defined by the Endangered Species Act) that is listed. While a proposed Federal action may have significant adverse consequences to one or more "recovery units," this would only result in a jeopardy determination if these adverse consequences reduce appreciably the likelihood of both the survival and recovery of the listed entity. The penultimate paragraph on page 4-36 of the Consultation Handbook provides the following elaboration related to this matter:

> When an action appreciably impairs or precludes the capacity of a recovery unit from providing both the survival and recovery function assigned to it, that action may represent jeopardy to the species. When using this type of analysis, include in the biological opinion a description

> of how the action affects not only the recovery unit's capability, but the relationship of the recovery unit to the both the survival and recovery of the listed species as a whole.

As a point of clarification, the previous practice granting exceptions to make jeopardy determinations for certain populations by way of a memorandum is discontinued. Any future jeopardy determinations for listed species, including species for which an exception memorandum was previously issued, must comport with the guidance described in this memorandum.

In summary, jeopardy determinations must assess whether the proposed action is likely to reduce appreciably both the survival and recovery of the listed species in the wild—as opposed to merely documenting significant adverse effects to one or more "recovery units." Please direct any questions regarding this memorandum to Rick Sayers, Chief, Division of Consultation, Habitat Conservation Planning, Recovery, and State Grants.