

ESA draft recovery regulations
February 16, 2007

410.02 Definitions

{make sure key definitions (“Secretary,” “Act” etc.) are already in new 410. Also review 410 definitions for consistency with use in this subpart}

Recovery outline means a succinct, strategic document used to direct the recovery effort and maintain recovery options for a species or group of species pending approval of a final recovery plan.

Recovery plan means a document that analyzes the threats and contains management actions, time and cost estimates, and recovery criteria for the species.

Comment [JPG1]: Preamble will include full justification for not developing recovery plans for foreign species. Will have to adjust justification if will also not do plans for species on the high seas.

Revised recovery plan means a recovery plan that has been substantially rewritten, which includes, but is not limited to, significant changes to the recovery strategy, recovery criteria, or recovery actions. Revision does not include amendments or updates to a recovery plan.

Subpart B – Recovery planning and implementation

410.101 Scope and applicability

(a) This subpart interprets and implements section 4(f) (16 USC 1533(f)) of the Endangered Species Act of 1973, as amended.

(b) Recovery plans will be developed for species that are indigenous to the United States or waters in which the United States exercises sovereign rights or jurisdiction, unless the Secretary finds _____

(c) [When the Secretary determines that the biological and threats-based recovery criteria contained in a recovery plan have been met, the Secretary [may] initiate the procedures for determining whether, in accordance with section 424.11 of this subchapter, the species should be removed from the Lists of Endangered and Threatened Wildlife and Plants.]

410.102 Recovery planning

(a) The Secretary, in cooperation with the States, tribal governments, and other federal agencies and on the basis of the best scientific and commercial data available, shall develop and implement recovery plans for the survival and recovery of endangered species and threatened species, unless the Secretary finds that a recovery plan will not promote the conservation of the species or that an existing plan or strategy to conserve the species already serves as the functional equivalent to a recovery plan and meets the requirements under section 410.106 of this subpart.

Comment [JPG2]: S 1180 throughout provides for cooperative relationship with States but did not include tribes or federal agencies. Recommend including, especially tribes.

Comment [JPG3]: S 1180 added a public notice process to making this finding.

Comment [JPG4]: “Functional equivalent” from S 1180, but without new statutory authority, any alternate will have to meet the statutory requirements of existing 4(f).

(b) The Secretary may appoint a recovery team to draft recovery plans consistent with the requirements of section 410.104 of this subpart.

(c) All recovery plans and revised recovery plans, including those developed by a recovery team and those developed under section 410.108 must adhere to all standards and procedures of section 4(f) the Act, this subpart, and any applicable policies or guidelines.

(d) All recovery plans and revised recovery plans are subject to final review and approval of the Secretary.

(e) The Secretary may procure the services of appropriate public and private agencies, institutions, and other qualified persons in developing recovery plans.

410.103 Recovery plan prioritization

To the maximum extent practicable, in developing recovery plans the Secretary shall give priority, without regard to taxonomic classification, to recovery plans for species that:

(a) face significant and immediate threats,

(b) have the greatest likelihood of achieving recovery,

[(c) can be combined with other species in a multiple-species or ecosystem plan], or

(d) are or may be in conflict with construction, development projects, jobs, private property use, or other economic activities, or military training and operations.

Comment [JPG5]: Mandate for agencies to develop new priority ranking system for preparation of recovery plans (see p 105-106) has not been included and will need to be justified (not necessary because current guidance includes all criteria except for military; current priority system accounts for military conflicts, next revisions of guidance will expressly include military guidance.

410.104 Recovery teams

(a) For a recovery team appointed under section[s] 410.102(b) [or 410.108] of this subpart, team membership shall include representatives from affected State, local, and tribal governments; federal agencies; academic institutions, private individuals and organizations, and commercial enterprises.

Comment [JPG6]: Priority to multi-species recovery plans has not been included and will need to be justified (SCB study, etc.)

(b) If the Secretary elects not to appoint a recovery team to develop the recovery plan for a species, the Secretary shall provide notice to each affected State, [tribal government, or federal agency] and shall provide the affected States, [tribal governments, or federal agencies] the opportunity to appoint a recovery team and develop a recovery plan consistent with this section and section 410.108 of this subpart.

Comment [JPG7]: S 1180 provides for development of recovery plans by States but did not include tribes or federal agencies. One requirement is a 6(c) agreement; possible to have with tribes? Some species exist entirely or mostly on federal or tribal lands, so we left option open for tribes and other federal agencies to develop plans.

(c) Members of the recovery team shall have expertise in one or more of the following areas:

(1) The species, closely related species, the ecosystem in which the species occurs or may once again become a part, or relevant disciplines such as ecology or genetics;

(2) Threats contributing to the status of the species;

(3) Elements of recovery [planning] [plan design] or implementation, such as land-use planning or knowledge of management actions that may reduce socioeconomic effects of implementation.

Comment [JPG8]: Language from June regs and 1994 policy on recovery plan participation adopted over S 1180 language.

(d) Recovery teams may:

(1) prepare and submit recovery plans to the Secretary,

(2) assist in the review and revision of recovery plans, and

(3) provide guidance on and assist with implementation of recovery plans.

Comment [JPG9]: Took out critical habitat language.

(e) The Secretary shall review each recovery plan or revised recovery plan submitted by a recovery team, including a recovery team appointed pursuant to section 410.108 of this subpart, to determine whether the plan meets the requirements of this part. If the Secretary determines that the plan does not satisfy these requirements, the Secretary shall notify the recovery team and give the team an opportunity to address the concerns of the Secretary and resubmit a plan that satisfies the requirements of this subpart. Following the notice and comment period under section 410.106(c) of this subpart, the Secretary shall adopt a final recovery plan that he finds is meets the requirements of this subpart.

(f) If the Secretary selects management actions or recovery criteria other than the management actions or recovery criteria recommended by the recovery team, he shall provide in the notice published under section 410.106(c) of this subpart an explanation of why the management actions or recovery criteria recommended by the recovery team were not selected for the final recovery plan.

(g) Recovery teams appointed under this subpart are not subject to the provisions of the Federal Advisory Committee Act.

410.105 Recovery outlines

To the maximum extent practicable, a recovery outline shall include:

(a) A determination as to whether the Secretary will appoint a recovery team to develop the recovery plan for the species, whether the recovery plan will be developed by a State, [tribal government, or other Federal agency] under section 410.108, or if the plan will be developed by a agency biologist or contractor, working with States, Tribes and other stakeholders.

(b) A recovery status assessment, which comprises biological, threats, and conservation assessments of the species.

(c) A preliminary recovery strategy that includes the recovery priority number, a recovery vision statement, and an initial action plan that includes interim [conservation] [management] actions. The initial action plan will take into consideration information relating to recovery issues presented during the public comment period for the proposed listing rule under section 424.____ of this subchapter. {Cross-reference the new listing

provision stating that a call for recovery info will be included in the proposed listing rule.}

- (d) A production schedule for completing components of the recovery plan.
- (e) Other pre-planning decisions such as preliminary plans for stakeholder involvement and outreach.

Comment [JPG10]: Provides alternative to S 1180 which called for submission of recovery criteria within 180 days of recovery team appointment.

410.106 Recovery plans

(a) To the maximum extent practicable, a recovery plan shall include:

(1) An analysis of threats to the species consistent with the factors for analysis under section 424.11(c) of this subchapter.

(2) Specific habitat needs and geographic areas necessary for recovery.

(3) Site-specific management actions that are necessary to achieve the plan's goal for the conservation and survival of the species.

(A) These management actions may include, but are not limited to:

(i) actions to reduce or eliminate threats to the species, such as actions to protect or restore habitat, manage or eliminate disease or predation, or reduce or eliminate overutilization;

(ii) actions to enhance small or fragmented populations, such as establishment of refugia, captive breeding, or establishment of experimental populations;

(iii) research necessary to develop effective management actions;

(iv) actions to be taken by federal agencies, including actions that use, [to the maximum extent practicable,] federal lands; and

Comment [JPG11]: From S 1180.

(v) opportunities to cooperate with State and Local governments

and other persons to recover species, including through the development and implementation of conservation plans under section 10 of the Act.

(vi) a monitoring plan that provides for determining progress in meeting benchmarks and recovery criteria, and establishing the baseline for post-delisting monitoring.

(B) Alternative management actions that would achieve the recovery criteria shall be considered during the planning process. In determining which management actions to include in the recovery plan, consideration will be given to the effectiveness of potential management actions in meeting the recovery criteria and the period of time in which the recovery criteria are likely to be achieved while also taking into account the social and economic impacts of the management actions.

Comment [JPG12]: S 1180 provided that a draft would include alternative actions. Given time constraints laid out here, budgetary constraints that are unlikely to change in the immediate future, and the fact that many recovery plans will be written by sizable recovery teams (as opposed to individuals) it's not possible to include a written description of alternative recovery measures, although alternatives will certainly be considered throughout the development of the document.

(4) Objective, measurable criteria that, when met, would result in a determination that the species be removed from the Lists of Endangered and Threatened Wildlife and Plants. {Add language that criteria must be threats-based under the 5-factors.}

(5) Estimates of the costs to carry out the measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.

(6) Estimates of the time required to carry out the measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.

[(7) Identification of federal agencies that authorize, fund, or carry out actions that are likely to have a significant impact on recovery of the species.]

Comment [JPG13]: From S 1180. This is tied to implementation agreements. Policy decision.

[(8) For final recovery plans or revised recovery plans, responses to significant comments received on the draft recovery plan or revised recovery plan.]

(b) A recovery plan also should include:

(1) Objective, measurable benchmarks expected to be achieved over the course of implementation of the recovery plan to determine whether progress is being made toward

recovery. To the extent possible, current and historical population estimates, known threat status, and any other relevant factors should be considered in determining whether progress is being made toward reaching recovery.

(2) The framework for a monitoring plan to determine that the benchmarks in paragraph (1) of this subsection are being achieved, determining when recovery criteria are met, and establishing the baseline for post-delisting monitoring.

(c) {Add provision on coordination between MMPA conservation plans and ESA recovery plans. }

(d) Plan development and review

(1) Development of the draft recovery plan will take into consideration information relating to recovery issues presented in response to the request for information in the final listing rule under section 424.____ of this subchapter. {Cross-reference the new listing provision stating that a call for recovery info will be included in the proposed listing rule. }

(2) When the Secretary determines that a draft recovery plan or draft revised recovery plan meets the requirements of this section, he shall provide public notice and an opportunity for public review and comment on the plan. Notice shall include publication of a notice of availability and summary of, along with a request for public comment on, the draft recovery plan in the Federal Register [and in a newspaper of general circulation in each affected State.] The draft recovery plan or revised recovery plan shall also be posted on the agency's website. The Secretary shall consider all information presented during the public comment period prior to approval of the plan.

Comment [JPG14]: Not including from S 1180 the requirement to hold public hearings in each affected state.

(3) The Secretary shall provide for independent scientific peer review of any new or revised draft recovery plan during the public comment period described under subsection (c)(2) of this section.

(4) Upon approval of the final recovery plan or revised recovery plan, the Secretary shall publish of a notice of availability of the final recovery plan in the Federal Register [and in a newspaper of general circulation in each affected State.] The final recovery plan or revised recovery plan shall also be posted on the agency's website.

410.107 Time schedules

(a) [To the maximum extent practicable] [To the extent achievable],

Comment [JPG15]: Either standard will have to be justified as different from S 1180, which provided no flexibility.

(1) if the Secretary determines that recovery team will be appointed under section 410.102(b), recovery team members shall be appointed no later than 90 days after publication of the final listing determination under 424.____;

Comment [JPG16]: Justify posting of web instead of FR notice.

Comment [JPG17]: Will include justification for change from 60 days.

(2) a draft recovery plan shall be completed no later than [18 months] [24 months] after publication of the final listing determination under 424.____; and

Comment [JPG18]: Position is that there should be no presumption in favor of recovery terms. More than 60% of listed species have very limited ranges, with few, if any, stakeholders, and thus can be completed more efficiently and cheaply, and as effectively with an agency biologist or contractor working with stakeholders.

(3) a final recovery plan shall be completed no later than [30 months] [36 months] after publication of the final listing determination under 424.____.

Comment [JPG19]: Different than 1994 policy and S 1180.

Comment [JPG20]: Different than 1994 policy and S 1180.

(b) If the Secretary for good cause finds that any of the deadlines under paragraph (a) of this section cannot be met, an extension may be granted.]

Comment [JPG21]: Details on documentation of reason for extension, notification of the extension to states, etc. will need to be worked out.

410.108 State, [tribal, and federal agency] authority to develop recovery plans

(a) At the request of the Governor of a State, [the head of a tribal government, or a federal agency] or the Governors of several States, the heads of several tribal governments or several federal agencies] in cooperation, the Secretary may authorize the respective State, [tribal, or federal] agency to develop or revise the recovery plan for an endangered species or threatened species in accordance with the requirements and schedules of sections 410.102, 410.104, 410.106, and 410.107 of this subpart, if the Secretary finds:

(1) [the State has entered into a cooperative agreement with the Secretary pursuant to section 6(c) of the Act, and]

(2) the State, tribal, or federal agency has submitted a statement to the Secretary demonstrating adequate authority and capability to carry out the requirements and schedules of sections 410.102, 410.104, 410.106, and 410.107 and this section.

(b) For multi-jurisdictional species, all affected States, [tribal governments, or federal

agencies] that develop a recovery plan under this section must work cooperatively.

(c) Any recovery plan developed under this section must address the entire species as listed under sections 17.11 and 17.12 of this title.

(d) The recovery team shall prepare a draft recovery plan in accordance with this section and section 410.106 of this subpart and transmit the plan to the Secretary.

(e) The Secretary will review each draft recovery plan developed pursuant to this section to determine whether the plan meets the requirements of this subpart. If the Secretary determines that the plan meets these requirements, the Secretary will approve the plan. If the Secretary determines that the plan does not meet these requirements, the Secretary shall notify the State, [tribal, or federal] agency and give the State, [tribal, or federal] agency 60 days to correct any deficiencies identified by the Secretary. If these deficiencies are not corrected within this timeframe, the Secretary will develop a recovery plan in accordance with this subpart.

(f) The Secretary may withdraw the authority from a State, [tribal government, or federal agency] that has been authorized to develop a recovery plan pursuant to this section if the actions of the state, tribal, or federal agency are not in accordance with the substantive and procedural requirements of sections 410.102, 410.104, 410.106, 410.107, and this section. In making this determination, the Secretary shall take into consideration any comments received from the public. The Secretary shall give the State, [tribal, or federal] agency an opportunity to correct any deficiencies identified by the Secretary and shall withdraw the authority from the State, [tribal government, or federal agency] unless the State, tribal, or federal agency has corrected the deficiencies identified by the Secretary within 60 days. Withdrawal of authority under this subsection will constitute good cause for an extension of the deadlines in section 410.107(b) of this subpart.

Comment [JPG22]: Did not include S 1180's ability to petition the agency to withdraw this authority, which also stated that denial of the petition would be a final agency action.

[410.109 Review of recovery plans]

Reserved

410.110 Implementation of recovery plans

(a) Each federal agency shall, prior to implementation of management actions in a

recovery plan or revised recovery plan, consider all information presented during the public comment period provided under section 410.106(c) of this subpart.

(b) The Secretary may procure the services of appropriate public and private agencies, institutions, and other qualified persons in implementing recovery plans.

(c) Recovery agreements

(1) The Secretary may enter into agreements with federal agencies, affected States, tribal governments, local governments, private landowners, organizations, and any other entity to implement specified management actions identified in a final recovery plan that promote the recovery of the species with respect to land or water owned by, or within the jurisdiction of, each such party. The Secretary may enter into such agreements if he determines that:

(A) each party to the agreement has the legal authority and capability to carry out the agreement;

(B) the agreement establishes a mechanism for the Secretary to monitor and evaluate implementation of the agreement.

[(2) Each federal agency identified in the recovery plan under section 410.106(a)(6) of this subpart shall enter into an implementation agreement with the Secretary no later than two years after the date on which the Secretary approves the final recovery plan or revised recovery plan for the species. The substantive provisions of the agreement shall be within the sole discretion of the Secretary and the head of the federal agency entering into the agreement.]

Comment [JPG23]: Provided for in S 1180. Would be authorized under 7(a)(1). Do not think there is existing authority to waive 7(a)(2) requirements provided in S 1180.

Related recommendations for Director:

1. Adopt joint NOAA/FWS 2006 recovery planning guidance.