

NATIONAL MARINE FISHERIES SERVICE/FEDERAL HIGHWAY ADMINISTRATION
MEMORANDUM OF UNDERSTANDING ON COORDINATION
OF HIGHWAY PROJECTS IN ALASKA

A. Purpose

The purpose of this memorandum of understanding is to assure early coordination of highway projects with the National Marine Fisheries Service as required by the Fish and Wildlife Coordination Act (16 USC 661-666c) to avoid unnecessary duplication of effort in the processing of federal permits, to provide procedures for resolving conflicts during the design and construction of highway projects, and to provide assurances that highway projects comply with Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands, of May 24, 1977.

B. Definition

1. NMFS – This shall mean the Regional Director of the National Marine Fisheries Service in Alaska.
2. FHWA – This shall mean the Division Administrator of the Federal Highway Administration in Alaska.
3. HA – This shall mean Highway authority, i.e., Alaska Department of Transportation and Public Facilities.
4. LEAD AGENCY – The Federal Highway Administration is recognized as the Lead Agency in Alaska for highway projects constructed with Federal-aid funds.
5. FEDERALLY-AIDED HIGHWAY PROJECTS – Highway and bridge projects constructed with the assistance of FHWA-administered funds.
6. ENVIRONMENTAL DOCUMENT – An environmental impact statement, categorical exclusions, environmental assessment, or reevaluation prepared under the direction of the FHWA during the development of a highway project.
7. CERTIFICATION – A statement contained in the environmental document that certifies that the project complies with applicable laws and regulations.

C. Authority and Agreement

The NMFS must review and comment on all activities falling under Section 404 of the Clean Water Act of 1977 and Section 10 of the River and Harbor Act on 1899 permit applications for highway projects. A significant number of these projects are constructed with the assistance of federal funds administered by the FHWA.

All highway projects are required to be coordinated with the NMFS under the Fish and Wildlife Coordination Act.

Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands, require identification and analysis of related impacts of highway projects in floodplain and wetland areas including anadromous fish streams, salt marshes, and estuaries. The NMFS will evaluate the impacts subject to availability of manpower and funding.

It is also agreed that the procedures set forth in this memorandum of understanding will be utilized to strengthen the early coordination between the NMFS and FHWA prior to and during the development of the highway project and environmental process. It is the intent of this memorandum of understanding that the results of the actions taken will satisfy the requirements of both the NMFS and FHWA.

D. Responsibility of the FHWA

The FHWA shall be responsible for the preparation of the environmental documents as appropriate in accordance with applicable Department of Transportation orders and Code of Federal Regulations, Title 23, Part 771. These documents shall demonstrate, where applicable, consideration of and compliance with Executive Orders 11990 and 11988 and regulations implementing those orders. The regulations are attached to and are a part of this memorandum of understanding.

As the lead agency, the FHWA shall be responsible for assuring that floodplain management and protection of wetlands are coordinated with the NMFS during project development.

The FHWA will require that procedures are implemented by the HA for those projects where the HA has determined that floodplains or wetlands are being impacted, to assure the NMFS is consulted early during the development of environmental documents to identify alternatives and evaluate environmental impacts.

The FHWA shall certify as to the compliance with the Executive Orders in each environmental document where applicable.

Procedures will also be implemented to provide consultation with the NMFS concerning subsequent design and construction changes that may be proposed affecting floodplains or wetlands.

Where the consultations between the FHWA/HA and NMFS identify areas of disagreement that have not been resolved, the FHWA Division Administrator shall meet with the NMFS Regional Director to seek resolutions of the disagreements.

E. Responsibility of the NMFS

The NMFS will cooperate with and provide guidance to the HA during highway project development. Specific areas of environmental concern shall be identified as well as recommending alternative solutions to those concerns. The NMFS will coordinate with the Alaska Department of Fish and Game and U.S. FWS proposed solutions that will be mutually acceptable within their areas of responsibility.

The NMFS will review the final environmental document where applicable concurrently with the FHWA, and request a meeting with the FHWA Division Administrator, when necessary, to seek resolution of concerns.

The environmental processing by FHWA of environmental documents will ordinarily be accepted by NMFS as satisfactory compliance with Executive Orders 11990 and 11988 for the purpose of processing federal permits.

F. Terms of the Agreement

The terms of this agreement will become effective upon the signature of both the approving officials of the respective agencies entering into this agreement. This agreement will remain in effect until terminated by mutual agreement or a 30-day advance written notice by either party of the specified termination date.

Concur: /s/ _____
Director, Alaska Region
NMFS

Concur: /s/ _____
Division Administrator
FHWA

Date: 4/26/85

Date: 4/15/85