

Environmental Assessment
for the
Healthy Forests Initiative
Counterpart Regulations

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I. Purpose and Need of the Proposed Action

A. Introduction

The U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) (jointly, Services) are evaluating the environmental effects of establishing counterpart regulations pursuant to Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA). These counterpart regulations are being proposed in cooperation with the U.S. Department of Agriculture, Forest Service (FS) and the Department of the Interior's Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), and National Park Service (NPS) (jointly, Action Agencies). The proposal supports the President's Healthy Forests initiative and is intended to streamline ESA section 7 consultations on proposed projects that support the National Fire Plan (NFP), an interagency strategy approved in 2000 to reduce the risk of catastrophic wildland fires and restore fire-adapted ecosystems. The Services are considered the lead Federal agencies for the proposed action.

Such counterpart regulations, authorized in general at 50 CFR 402.04, would provide an optional alternative to the existing section 7 consultation process described in 50 CFR part 402, subparts A and B. The counterpart regulations complement the general consultation regulations in part 402 by providing an alternative process for completing section 7 consultation for agency projects that authorize, fund, or carry out actions that support the NFP. The alternative consultation process contained in these proposed counterpart regulations would eliminate the need to conduct informal consultation and eliminate the requirement to obtain written concurrence from the applicable Service for those NFP actions that the Action Agency determines are "not likely to adversely affect" (NLAA) any listed species or designated critical habitat. The purpose of establishing the counterpart regulations is to streamline the consultation process established in section 402 subpart B for those projects proposed by the FS, BIA, BLM and FS that support the NFP, by reducing delays in processing that may occur as a result of additional paperwork burdens.

B. Needs/Objectives

In response to several years of catastrophic wildland fires throughout the United States culminating in the particularly severe fire season of 2000, when over 6.5 million acres of wildland areas burned, President Clinton directed the Departments of the Interior and Agriculture to develop a report outlining a new approach to managing wildland fires and restoring fire-adapted ecosystems. The report, entitled *Managing the Impact of Wildfires on Communities and the Environment*, was issued September 8, 2000. This report set forth ways to reduce the impacts of fires on rural communities, a short-term plan for rehabilitation of fire-damaged ecosystems, and ways to limit the introduction of invasive species and address natural restoration processes. The report, and the accompanying budget requests, strategies, plans, and direction, have become known as the NFP. The NFP is intended to reduce risk to communities and natural resources from wildland fires through rehabilitation, restoration and maintenance of fire-adapted ecosystems, and by the reduction of accumulated fuels or highly combustible fuels on forests, woodlands, grasslands, and rangelands.

In August 2002, during another severe wildland fire season in which over 7.1 million acres of wildlands burned, President Bush announced the Healthy Forests Initiative. The initiative was intended to accelerate implementation of the fuels reduction and ecosystem restoration goals of the NFP in order to minimize the damage caused by catastrophic

wildfires by reducing unnecessary regulatory obstacles that have at times delayed and frustrated active land management activities. The agencies were tasked with streamlining the approval process for NFP projects.

The goal of the proposed counterpart regulations is to accelerate the process of approving NFP projects by reducing the time and effort needed to conduct a consultation for a NFP activity that is NLAA.

This environmental assessment will provide the responsible officials with the analysis needed to make a well reasoned and informed decision in the selection of the appropriate alternative to achieve the purpose and need of the proposed action.

II. Alternatives, Including the Proposed Action

A. Alternatives considered

Proposed Action

The existing ESA section 7 regulations require an action agency to complete consultation with the Services on any proposed action that may affect a listed species or designated critical habitat. Following either a biological assessment or informal consultation with the Services, the Action Agency makes a determination that a proposed action is “not likely to adversely affect” (NLAA) or is “likely to adversely affect” any listed species or designated critical habitat. If the determination is NLAA, then the Action Agency need not complete formal consultation if it obtains written concurrence from the Services. If the Action Agency determines that the proposed project is likely to adversely affect a listed species or critical habitat, then the Action Agency must complete formal consultation and obtain a biological opinion from the Service. The alternative consultation procedures contained in the proposed counterpart regulations would allow the Service to provide training, oversight, and monitoring to an Action Agency through an alternative consultation agreement (ACA). Implementation of the ACA will enable the Action Agency to make an NLAA determination for any fire plan project without engaging in informal consultation or obtaining written concurrence from the Services.

Under the proposed counterpart regulations, an Action Agency could enter into an ACA with either FWS, NMFS or both. The ACA would describe how the particular Action Agency would implement a program that allows the agency to make the NLAA determination without informal consultation with or concurrence from the Services. The Action Agency would have a list or description of the staff within its agency that would make the NLAA determinations. A training program and a program for monitoring and periodic program evaluation will be jointly developed by the Action Agency and the Service. The Action Agency will maintain a list of all of the fire plan projects for which a NLAA determination is made and the information necessary for the Services to complete the monitoring and periodic program evaluation. In addition, the Action Agency would establish a process for incorporating new information and newly listed species and critical habitat information into how it assesses the effects to listed species by the proposed projects. The standards that the Action Agency is using to assess effects to listed species would be detailed in the ACA.

The Services would be responsible for helping the Action Agency complete a training program for those personnel making the NLAA determinations. In addition, the Services would be responsible for evaluating the program to make sure that the implementation is consistent with the best available scientific and commercial information. This program

evaluation would occur after the first year that the Action Agency makes the NLAA determinations and periodically, as specified in the ACA, thereafter.

Under this proposed action, the Action Agencies may still conduct informal consultation with the Service when making the NLAA determinations without written concurrence from the Service. While informal consultation is not a mandatory step in the consultation process, many Action Agencies take advantage of this approach, using the expertise of the Service to further modify the project such that it does not have adverse affects to listed species or critical habitat. As a result of the implementation of an ACA, it is envisioned that informal consultation would occur less frequently since the Action Agencies would be making the NLAA determinations without informal consultation or written concurrence from the Services.

No Action Alternative

No change in the current consultation procedures would occur. The Action Agencies would continue to conduct informal consultation (when needed) and receive concurrence letters from the Service and NMFS, if appropriate, for those actions that support the NFP that are not likely to adversely affect listed species or designated critical habitat.

B. Alternatives eliminated

Memorandum of Understanding/Programmatic Consultation

We considered streamlining the consultation process through completion of a programmatic consultation on the implementation of the NFP program, which would include signing a Memorandum of Understanding that outlined a streamlining process for providing concurrence letters to the Action Agencies from the Services. This agreement would set out a process of coordination between the agencies that would allow the concurrence letters to be issued in a timely manner.

The Services and the Action Agencies currently have several agreements in place, for example the MOA on Section 7 Programmatic Consultation and Coordination. While such agreements streamline the process significantly by improving coordination between the consulting agencies, the process still requires involvement of the Services in concurrence decisions on projects that are NLAA listed species or critical habitat. These types of streamlining processes work well and the established timelines can be met but still encumber the Services' biologists in requiring concurrences for NLAA actions and thereby diverting their attention from actions that require formal consultation.

Based on the above discussion, the Services have determined that this alternative does not meet the purpose and need of the proposed action, and therefore was eliminated from further analysis.

III. Affected Environment

Any effects of the proposed action [the proposed action is adopting a new regulation] would occur if and when the FS, BIA, BLM or NPS, choose to voluntarily enter into an ACA with either one or both of the Services.

The NMFS has seen increased consultations on projects that impact ESA Pacific salmon and steelhead over the last two years in the Northwest (NWR) and Southwest Regions (SWR). In fiscal year (FY) 2002, the NWR did more than 1,000 consultations. Of those

consultations, 29 percent of them were for projects that supported the NFP. In FY 2003, 20 percent of consultations in the NWR have been on projects that support the NFP.

In FY 2002, the SWR did more than 800 consultations, and nearly 10 percent of those were for projects that supported the NFP. Currently, 7 percent of consultations in the SWR this year have been in support of the NFP. While the number of consultations appear to be high, it is important to note that a majority were informal consultations. In the last two years at NMFS, these two regions have consistently completed the largest number of fire plan consultations nationwide.

In the FWS the number of consultations completed nationwide has doubled since 1996. In FY 2002, the FWS completed over 71,000 informal consultations and over 1,200 formal consultations. The largest number of informal consultations was completed in the Southeast region, whereas the Pacific region completed the largest number of formal consultations.

In FY 2002, approximately 1 percent of the consultations in the FWS were for projects that support the NFP. In the last two years, the Mountain-Prairie, Pacific and Southwest Regions completed the majority of the NFP consultations nationwide. These regions include states that have recorded the largest wildland fires within the last century, Colorado, Arizona and Oregon. In addition, these Service regions support a large number of listed species many of which are wide-ranging. The combination of multiple listed species, the necessity of implementing fire plan projects, and the large federally managed land in these three regions contributes to the large number of consultations completed on projects that implement the NFP.

The Services expect that the number of informal and formal consultations requested for projects that implement the NFP will increase in the future as additional funding and effort is directed towards implementation of the NFP.

IV. Environmental Consequences

Proposed Action Alternative

The proposed action alternative would be a procedural change in conducting ESA section 7 consultations for those NFP projects that are not likely to adversely affect listed species or designated critical habitat. This alternative would not have any environmental effects. There may be an increase in administrative costs within the Action Agency given that the Action Agency would assume responsibility for administering this process. However, these would be routine costs associated with implementing a program within the agency.

Accordingly, the regulatory procedural changes would only enhance the efficiency of the program without eliminating the ultimate Federal agency responsibility for complying with section 7. As discussed in the preamble for the section 7 regulations (51 FR 19937), the proposed program must retain the overall degree of protection afforded listed species required by the ESA. The standards for analyzing the effect of the proposed fire plan projects would remain the same. The ACA will describe the standards that the Action Agency will apply in assessing the effects of the action on listed species. Those standards would be consistent with the standards the Services use in concurring with NLAA determinations. The training program will use the section 7 handbook, regulations and the ESA as the backbone for the program. The Action Agency will reach the same NLAA determination that the Services would reach, therefore exactly the same projects would proceed under the counterpart rule as under the current section 7 process.

Therefore, implementing the proposed counterpart regulation will not have any additional biological effects.

This alternative may cause a change in the administrative costs within the Action Agency implementing the ACA. The Action Agency would be required to conduct an upfront training program for personnel making the determination, and would need to provide a program that maintains these skills within the agency. The Action Agency would have to implement procedures for incorporating new listed species and critical habitat into their effects analysis and be more diligent in keeping current on new information regarding species biology. Typically this role has been conducted by the Services.

These administrative expenses would be offset by the benefits of the procedural change. The Action Agency would not have to expend resources on the informal consultation process or lose time waiting for a concurrence letter from the Services. The time saved ultimately equates to a financial savings in staffing expenses and can ultimately move the projects that support the NFP faster, potentially decreasing the number and severity of wildland fires, which would be a long term biological and economic benefit.

The Services would also likely see a small increase in administrative costs from implementing the ACA. In the short term, the Services would jointly develop a training program that would expend a larger amount of financial resources. However, this upfront cost would be balanced by the long term decrease in time spent analyzing projects that result in concurrence letters. In the long term, the Services would need to monitor how the ACA is implemented by the Action Agencies. The monitoring program likely will not be as time consuming as the current process of providing concurrence letters. By removing the need to provide concurrence letters, the Services could devote more time to analyzing and coordinating on projects that do have adverse effects to listed species and critical habitat.

The Service does not anticipate any other adverse effects to the environment from implementation of the proposed action.

No Action Alternative

No change from the current procedures therefore, the Services do not anticipate any significant affects to the environment from implementation of the no action alternative (51 FR 19956).

VI. Compliance, Consultation and Coordination with Others

The FWS and NMFS worked jointly with FS, BIA, BLM, and NPS to prepare the proposed counterpart regulations. The proposed rule was published in the FR on June 5, 2003 (68 FR 33806). The 60-day public review ended on August 4, 2003. The Services received over 50,000 comments on the proposed rule, however, there were no comments speaking to the environmental effects of the rule itself. Many of the comments focused on effects the might occur as a result of actions taken during implementation of the NFP. However, this rule only allows for a procedural change in the consultation that might occur on those types of projects. The effects of the projects will still need to be considered at the time of the proposal, this regulation does not change the effects analysis.