

FINDING OF NO SIGNIFICANT IMPACT
FOR PROPOSED JOINT COUNTERPART REGULATIONS
FOR THE HEALTHY FORESTS INITIATIVE

The U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) (jointly, Services) are proposing to establish 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 Environmental Assessment was prepared that addressed two alternatives, the proposed action and the no action alternatives. One alternative was eliminated, the Memorandum of Understanding/Programmatic Consultation alternative. The President's Healthy Forests 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. The agencies were tasked with streamlining the approval process for NFP projects. Therefore, 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 not likely to adversely affect (NLAA) listed species or designated critical habitat.

Alternatives Considered

Proposed Action Alternative

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. These counterpart regulations do not change the standards for making the determination, only the procedures for completing the consultation.

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 Services, if appropriate, for those actions that support the NFP that are not likely to adversely affect listed species or designated critical habitat.

Effects and Finding of No Significant Impact

The Services have selected the proposed alternative. The proposed action alternative would be a procedural change in conducting ESA section 7 consultations for those NFP projects that are NLAA listed species or designated critical habitat. 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 counterpart regulation 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 Action Agency will still be required to comply with all existing laws with regards to implementing any proposed fire plan project, including further environmental review, if necessary. Therefore, no significant effect to these environmental resources is expected to result from this procedural change to the section 7 consultation process contained in the proposed counterpart regulations.

Public Review and Comment

On June 5, 2003, the Service published a notice in the Federal Register (68 FR 33806) announcing the 60-day comment period on the proposed Joint Counterpart Endangered Species Act Section 7 Consultation Regulations. The comment period closed on August 4, 2003. The Service received over 50,000 comments on the proposed rule.

On October 9, 2003, the Service published a notice in the Federal Register (68 FR 58298) announced the reopening of the comment period on the proposed joint counterpart regulations and the availability of the Environmental Assessment for the Healthy Forests Initiative Counterpart Regulations. The comment period closed on November 10, 2003. Electronic copies were available from the USFWS World Wide Website at: <http://endangered.fws.gov/consultations/forestplan.html>. During this comment period, the Service received eight comments on the proposed rule and Environmental Assessment. Our response to comments is provided in the final rule for the counterpart regulations. This Finding of No Significant Impact (FONSI) will be made available to all interested parties upon request. The Service will publish a notice of availability for the FONSI along with the Final regulation.

IV. Conclusion

The Service has determined that the proposal does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, an Environmental Impact Statement on the Proposed Action is not required.

NOV 25 2003

Date



Director,
Fish and Wildlife Service

Date

Assistant Administrator,

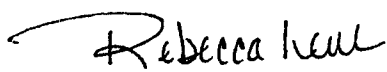
National Marine Fisheries Service,
National Oceanic and Atmospheric Administration.

Date

Director,
Fish and Wildlife Service

NOV 26 2003

Date



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