

## Counterpart Regulations

### Frequently Asked Questions (FAQs) on Implementing the Counterpart Regulations for National Fire Plan Projects

#### References:

Counterpart Regulations, Federal Register, December 8, 2003

<http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2003/pdf/03-30393.pdf>

Alternative Consultation Agreements, March 3, 2004

[http://www.blm.gov/nhp/spotlight/counterpart\\_regulations/BLM\\_ACA.pdf](http://www.blm.gov/nhp/spotlight/counterpart_regulations/BLM_ACA.pdf)

<http://www.fs.fed.us/biology/tes/index.html>

<http://endangered.fws.gov/consultations/forestplan.html>

**1. Question:** What is the purpose of the Counterpart Regulations?

**Answer:** The purpose is to enhance the efficiency and effectiveness of the consultation process under section 7 of the ESA for Fire Plan Projects (FPP).

**2. Question:** How do the Counterpart Regulations relate to the Healthy Forest Initiative and National Fire Plan (NFP)?

**Answer:** They were developed as part of the Initiative and are designed to help achieve implementation of the fuels reduction and ecosystem restoration goals of the NFP.

**3. Question:** Who has the responsibility for conducting and documenting NLAA determinations made under the counterpart regulations?

**Answer:** The action agency.

**4. Question:** Is the same level of protection for TEP species/Critical Habitat expected when implementing the counterpart regulations?

**Answer:** Yes, Action Agency effects analyses will be the same as is done now, and the level of protection is expected to be the same.

**5. Question:** If I make an NLAA determination for a National Fire Plan project, will I still need written concurrence from the FWS or NMFS?

**Answer:** No. Under the counterpart regulation, the action agency's responsibility to do effects analysis and potentially make and document a NLAA determination and compliance with the counterpart regulation now becomes the final consultation requirement under the ESA.

**6. Question:** What kinds of projects can I use the counterpart regulations on?

**Answer:** Projects that support the National Fire Plan.

**7. Question:** How do I determine whether a project supports the National Fire Plan?

**Answer:** Based on project objectives and the activities proposed, the line officer certifies whether the proposed action meets National Fire Plan goals (firefighting, post-fire rehabilitation and restoration, hazardous fuel reduction, and community wildland fire assistance). These activities may include, but are not limited to: prescribed fire, mechanical fuels treatments, emergency stabilization, burned area rehabilitation, road maintenance and operations activities, ecosystem restoration, and culvert replacement activities.

**8. Question:** For which species can I use the counterpart regulations? What about designated critical habitat?

**Answer:** All ESA-listed and proposed species and designated critical habitat that are within the action area of a fire plan project (FPP).

**9. Question:** Have the counterpart regulations and alternative consultation agreement changed how I conduct and document a biological assessment or biological evaluation (BA/E)?

**Answer:** No. However, there is a greater responsibility for you to create and maintain the project record to demonstrate that you have used the best available scientific and commercial information.

**10. Question:** I hear that training is required to use the counterpart regulations. How do I obtain the required training?

**Answer:** A web-based training system has been developed. Training and certification is required to use the counterpart regulations.

[http://www.ntc.blm.gov/blm\\_1386/html/gateway/ie/launcher.htm?C\\_ID=&Mode=](http://www.ntc.blm.gov/blm_1386/html/gateway/ie/launcher.htm?C_ID=&Mode=)

**11. Question:** If I'm a journey level biologist, botanist or ecologist who is responsible for ensuring and documenting BE/BA adequacy, do I need to take the training and be certified?

**Answer:** Yes. Under the counterpart regulations, the action agencies are assuming greater responsibility under the ESA, and must ensure adequate training of all individuals who use and support the regulations.

**12. Question:** As a line officer of a unit where we are implementing the counterpart regulations, why do I have to take the training?

**Answer:** In order to certify actions are consistent with the National Fire Plan and the ESA counterpart regulation, you must have an understanding of the regulations.

**13. Question:** Why are line officers required to certify that their projects are National Fire Plan projects?

**Answer:** Line officers are ultimately responsible for ensuring actions comply with the requirements of the counterpart regulations, which includes documenting that the project is within the scope of the National Fire Plan.

**14. Question:** How do I determine what the environmental baseline is for a species and what the status of the species is? Isn't that FWS's and or NMFS's job?

**Answer:** The action agencies continue to have the responsibility to know the action area environmental baseline and status of the species. Further information can be found in the section 7 consultation handbook and section 7 regulations.

**15. Question:** If I have a project that is LAA for a listed or proposed species or designated critical habitat, can I use the counterpart regulations?

**Answer:** No.

**16. Question:** What do I do if I have an NLAA for three species and an LAA for a fourth species in my national fire plan project area?

**Answer:** The counterpart regulations apply to the first three species while formal consultation must be initiated on the project for the fourth species.

**17. Question:** My project involves the commercial harvest of about 500 acres of forest, and a component of the project includes fuels reduction activities on about 200 acres. The NEPA document describes it as one project. Can I use the counterpart regulations to satisfy section 7 consultation requirements on both activities?

**Answer:** If each project activity supports the National Fire Plan, you can use the counterpart regulations. If they do not, only the activities that support the National Fire Plan can be assessed under the counterpart regulations, as long as the activities are not interrelated and interdependent.

**18. Question:** After I have completed my BA/BE and a contract has been let, what do I do if I learn about new information relevant to the project and its effect to the listed species?

**Answer:** As before, you must re-analyze the project to determine whether or not the effects determination remains valid.

**19. Question:** In the Pacific Northwest, will our level 1 teams still be used for evaluating NLAA determinations for Fire Plan Projects (FPP)?

**Answer:** The use of level 1 teams for NLAA determinations on FPPs is at the discretion of the action agency. If the counterpart regulations are used, the final determination lies with the action agency.

**20. Question:** Can I share my draft BA/BE with FWS or NMFS to gain their input?

**Answer:** Yes, the ACA allows the action agency to request assistance relevant to the effects analysis.

**21. Question:** Can I send my final BE/BA to the FWS or NMFS, for their records?

**Answer:** It is at the discretion of the action agency.

**22. Question:** Under the counterpart regulations, can a subunit continue to use the streamlining procedures and associated tools for FPPs?

**Answer:** Yes, if the action agency finds them useful and appropriate.

**23. Question:** Do I have to keep track of every project I use the counterpart regulations on?

**Answer:** Yes. Completing Appendix 1 of the Alternative Consultation Agreement will allow you and your state/regional office to track NFP projects that used the counterpart regulations.

**24. Question:** I notice that there is going to be monitoring and evaluations of field unit performance in implementing the counterpart regulations. Who is going to do the evaluations, how often and for what purpose?

**Answer:** At the end of the first year and every three years thereafter, the FWS and NMFS will lead a national interagency monitoring team. The purpose of the monitoring program is to evaluate whether the action agency is making NLAA determinations on FPPs consistent with the best available scientific and commercial information, and in compliance with the ESA and the section 7 regulations.

**25. Question:** At the end of one year, how will I know if my project is selected for the National Monitoring and Program Evaluation? And, if so, what will I need to provide?

**Answer:** The National Interagency Monitoring Team will notify your subunit. If one of projects is selected, you will need to provide the Team with the project BE or BA.

**26. Question:** Given that my field unit has a limited budget, how do I maintain access to the best available scientific and commercial information?

**Answer:** Affordable access to information is available through the internet (such as USDA Digitop, FWS/NMFS T&E species sites, etc.), agency and other libraries, personal contacts, and species experts. Contact your state/regional TES program leaders for more information.

**27. Question:** If a non-journey level biologist who has completed counterpart regulations training conducts and documents the BA, what role, if any, does a "journey level biologist" have?

**Answer:** A counterpart regulations certified journey level biologist needs to ensure the adequacy of the BA, and their name is to be provided on the ACA Appendix 1 form.

**28. Question:** My journey level botanist isn't interested in using counterpart regulations. How do I get my potential NLAA FPP evaluated or reviewed?

**Answer:** It is up to the line officer to ensure appropriate skills are available and used if he/she chooses to use the counterpart regulations.

**29. Question:** The FWS has listed a new species. It occurs in my FPP project area and work activity is scheduled next month. What do I do?

**Answer:** You must re-analyze the project to determine whether or not there are any effects, whether or not a NLAA determination is appropriate and whether or not to utilize the counterpart regulations.

**30. Question:** What is the “subunit”, the administrative office that needs to report to the FWS and NMFS that it has completed training, and intends to implement the Counterpart Regulations?

**Answer:** For the BLM, subunit refers to the Field Office or the District office, and for the Forest Service it refers to the Ranger District or Forest Supervisor’s office.

**31. Question:** What is the role of Regional Contacts?

**Answer:** Regional Contacts serve as information resources to answer questions arising from subunits with their state or region, and to ensure consistency in analysis and reporting of Fire Plan Projects. Those contacts are given in the following table.

### **Supplemental, field-generated questions and answers on use of the Endangered Species Act Counterpart Regulations, September 2004**

**32. Question:** Which biologists are to use counterpart regulations? Do all need to be certified?

**Answer:** All biologists who will do BA/BEs under the counterpart regulations are required to take the counterpart regulations training. (Even those who do not anticipate doing BA/BE effects analyses for NFP projects, are encouraged to take the training, since Modules 3 and 4 cover ESA standards of review and documentation for any/all types of projects.) However, because only journey level biologists (includes botanists and ecologists) are to sign off on the BA/BE for counterpart regulations projects on the Appendix 1 form of the Alternative Consultation Agreement (ACA), only those biologists should take the staff certification exam. If they did not do the BA/BE effects analysis (i.e., a non-journey level biologist did it) the certified journey level biologist must review the BA/BE, and, based on that review, document the adequacy of the BA/BE on the Appendix 1 form for that project (ACA, D. 1.).

**33. Question:** What information do I need to provide the FWS and/or the NMFS when we have employees that have both taken the training and been certified?

**Answer:** Whenever a subunit has at least one line officer and one biologist (includes botanists and ecologists) certified, they can/should notify FWS and NMFS of that fact, and of the intent of the subunit to start using the counterpart regulations (ACA, E.8.). They are not required to wait to get all their personnel certified prior to doing this. Also, they do not need to provide their lists of names to FWS and NMFS.

**34. Question:** How do I know who is certified?

**Answer:** Whenever a line officer or journey level biologist (includes botanists and ecologists) has completed the training and the certification exam they get the exam results immediately. Ask individuals if they have taken the exam and received a passing grade; or, consult the master list of Forest Service or BLM certified personnel, which the National offices of each action agency maintain and update on a regular basis. Ask your regional counterpart regulations contact person (given in the original FAQ document) for this list.

**35. Question:** Do we still have to do BA/BE effects analyses for NFP projects?

**Answer:** Yes, the counterpart regulations has changed nothing regarding the need to do a complete effects analysis of NFP projects and their possible/potential effects to TEP species and designated or proposed critical habitat (see the counterpart regulations; the ACA, parts D., F. and G.; ESA, NFMA, FLPMA and NEPA).

**36. Question:** Won't the one year review just look at the Project Tracking form of projects done, and the species for which a NLAA determination was made?

**Answer:** No, that form will provide the FWS/NMFS Monitoring Team with the total list of projects for which the counterpart regulations was used. It will form a basis for selecting a sample of project BA/BEs that will be provided by the action agency subunits to the Team for their review to determine (among other things) whether the action agency considered relevant information and used the best scientific and commercial data available in evaluating effects of the proposed action on listed species and critical habitat and in making their determinations of effect (see the counterpart regulations, and ACA, parts I. 5., 6., 7.).

**37. Question:** Our interagency Level 1 consultation teams are effective, and the agencies mutually want to continue to use them in doing T&E effects analysis for many proposed actions. Can we still use the counterpart regulations, in addition to the Level 1 process?

**Answer:** Yes, it may be useful to continue to use Level 1 teams in such situations, if it is needed to either conduct the T&E effects analysis, or to accomplish appropriate interagency coordination. It is at the discretion of the land management line official. Even where Level 1 teams are used, and NLAA determinations are made, it still can be advantageous to use the counterpart regulations process. Some regulatory agency time would be saved by not requesting the regulatory agency to again review the BA/BE and prepare a concurrence letter. It may also allow a NEPA decision on the proposed action to be made sooner than otherwise would have been the case.

**Agency Counterpart Regulation/Alternative Consultation Agreement  
Implementation Contacts:**

<b>United States Fish and Wildlife Service</b>		
R1-WA/OR	Kristi Young	503-231-6845
R1-CA/NV	Vicki Campbell	916-414-6464
R2	Delphina Montano	505-248-6401
R3	Jennifer Szymanski	612-713-5342
R4	Joe Johnston	404-679-4155
R5	Glenn Smith	413-253-8627
R6	Bridgett Fahey	303-236-4258
R6	Ari Cornman	303-236-4254
National	Rick Sayers	703-358-2106
<b>NOAA Fisheries</b>		
NWR	Charley Rains	208-378-5686
NWR	Steve Keller	360-534-9309
SWR	Chuck Glasgow	707-825-5170
SWR	Garwin Yip	707-825-5166
NER	Pasquale Scida	978-281-9208
SER	Stephania Bolden	727-570-5312
National	Ann Garrett	301-713-1401
<b>USDA Forest Service</b>		
R1	Tim Bertram	406-329-3677
R2	Nancy Warren	303-275-5064
R3	Wally Murphy	505-842-3195
R4	Lee Jacobson	801-625-5664
R5	Diane Macfarlane	707-562-8931
R6	Sarah Madsen	503-808-2673
R8	George Bukenhofer	404-347-4085
R9	Steve Mighton	414-297-3612
R10	Ellen Campbell	907-586-7919
National	Marc Bosch	202-205-1220
National	David Pivorunas	202-205-1213
<b>Bureau of Land Management</b>		
Alaska	John Payne	907-271-3431
Arizona	Ted Cordery	602-417-9242
California	James Newman	916-978-4635
Colorado	Wes Anderson	303-239-3608
E. States	Geoff Walsh	703-440-1668
Idaho	Tim Burton	208-373-3819

Montana	Gayle Sitter	406-896-5293
New Mexico	Mike Howard	505-525-4348
New Mexico	Paul Sawyer	505-438-7516
Nevada	Randy McNatt	775-861-6473
Nevada	Erick Campbell	775-861-6471
Oregon	Barb Hill	503-808-6052
Oregon	Joe Moreau	503-808-6418
Utah	Ron Bolander	801-539-4065
Wyoming	Jeff Carroll	307-775-6090
National	Peggy Olwell	202-452-7764
<b>National Park Service</b>		
National	Bruce Rittenhouse	970-225-3591
National	Peter Dratch	970-225-3596
<b>Bureau of Indian Affairs</b>		
National	John Vitello	202-208-5968

Each subunit that intends to implement the counterpart regulations must send a formal letter(s) to the FWS and/or the NMFS that has completed training. For the FWS, send the letter to the subunit's normal FWS Field Office Supervisor(s). For NMFS, use this address in the letter, and email it to the address given:

Laurie K. Allen, Director  
Office of Protected Resources  
NOAA Fisheries, SSMC3 - F/PR3  
1315 East West Highway  
Silver Spring, MD 20910

[NMFS.nationalfireplan@noaa.gov](mailto:NMFS.nationalfireplan@noaa.gov)

1 September 2004