

adverse comment within the specified time period, a notice withdrawing the direct final rule will be published in the final rule section of the **Federal Register** and a notice of proposed rulemaking will be issued in the proposed rule section of the **Federal Register**.

(e) An "adverse" comment for the purpose of this subpart means any comment that is critical of the rule, that suggests that the rule should not be adopted, or suggests a change that should be made in the rule. A comment suggesting that the policy or requirements of the rule should or should not also be extended to other Departmental programs outside the scope of the rule is not adverse.

Issued in Washington, DC on this 19th day of July, 1995.

**Federico Peña,**

*Secretary.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### National Marine Fisheries Service

### 50 CFR Part 402

RIN 1018-AD32

### Joint Counterpart Endangered Species Act Section 7 Consultation Regulations

**AGENCIES:** Fish and Wildlife Service, Interior; and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** With the concurrence of the U.S. Department of Agriculture, Forest Service (FS) and the Department of the Interior, Bureau of Land Management (BLM), the U.S. Fish and Wildlife Service (FWS) and the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) propose to promulgate counterpart section 7 consultation regulations (50 CFR 402) under the Endangered Species Act of 1973 to establish an alternate consultation process. These regulations supplement the more general consultation regulations in Part 402 to provide for a more effective and efficient process to

meet the specific needs of BLM and FS programs.

**DATES:** Comments on this proposal must be received by October 3, 1995, in order to be considered in the final decision on this proposal.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, N.W., Washington, DC 20240. Comments and materials received will be available for public inspection, by appointment, during normal business hours in Room 452, 4401 North Fairfax Drive, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** E. LaVerne Smith, Chief, Division of Endangered Species, at the above address (703/358-2171; facsimile 703/358-1735) or Robert C. Ziobro, Endangered Species Division, NMFS, 1335 East-West Highway, Silver Spring, MD 20910 (301/713-1401 facsimile 301/713-0376).

### SUPPLEMENTARY INFORMATION:

#### Background

These proposed joint counterpart Endangered Species Act (ESA) consultations procedures govern ESA section 7(a) consultation for FS and BLM. The procedures differ from the existing procedures in part 402 subparts A and B in that they encourage ESA consultation well before project-level decisions are made and provide a framework for consultation on program-level or ecosystem-level decisions, as opposed to project-level decisions. This early consultation at the program-level facilitates future consultation at the project-level and these procedures describe how that streamlining is accomplished. In addition, while the regulations at part 402 subparts A and B are silent as to whether ongoing actions can continue during consultations, these regulations expressly address that issue and specify the measures the agencies will take regarding ongoing actions once ESA consultation at the project-level becomes mandatory.

Under these procedures, FS and BLM and the appropriate consulting Service (either FWS or NMFS) are required to enter into a consultation agreement, unless they have already done so for that species or decision, when (1) a new species is proposed for listing or is listed; (2) critical habitat is proposed for designation or is designated; (3) a revision or amendment of a land planning document is formally announced; or (4) FS, BLM or one of the Services requests a consultation

agreement. In this agreement, the agencies choose how they will conduct program-level and project-level consultation. That is, they decide whether project-level (which the procedures call non-site-specific) consultation and when project-level (which these procedures call site-specific consultation) consultation will occur. The agreement sets a schedule for the chosen manner of consultation and all subsequent actions related to ongoing activities.

The objective of non-site specific consultation is to identify standards and guidelines or parameters that then can be applied to site-specific consultations. Where the parameters are identified as adequate to avoid adverse effects to the listed species in the non-site-specific consultation by the appropriate Service, the parameters are then used to facilitate site-specific consultation. For those actions that are in conformance with adequate parameters, consultations is concluded when FS and BLM notify the appropriate Service of the conforming action and provide the Service with the basis for that decision. Where no adequate parameters have been identified in a non-site-specific consultation, the action agencies are required to conduct consultation/conference pursuant to sections 402.10 and/or 402.14 for any project-level decisions.

The procedures address the measures the agencies are to take with respect to ongoing actions when consultation becomes mandatory under section 402.14. The procedures require the identification of all ongoing actions that may affect the listed species and an initial determination of which actions represent an imminent threat to the listed species. The action agencies are required to take all possible steps to halt or modify these imminent threat actions. The action agencies are required then to identify all actions that are likely to adversely affect the species in question and to review whether to take steps to halt or modify those actions as well. All other ongoing actions that are not halted under these procedures may go forward during consultation. Provisions for counterpart section 7 consultation procedures are set forth in section 402.04. Such regulations supersede consultation regulations at 50 CFR 402, subpart B.

As part of their land management planning processes, the FS prepares Land and Resource Management Plans and the BLM prepares Resource Management Plans. Plans identify general land-use purposes or allocations; future conditions that are desired on specific lands; goals and