

U.S.C. 601 *et seq.*). Significant adverse economic impacts are not expected as a result of the proposed rule because: (1) the rule is intended to reduce or eliminate altogether the consultation requirements on numerous Federal actions under the ESA with respect to listed and proposed species; and (2) the rule amends 50 CFR 402, resulting in consultation efficiencies that will effectively reduce potential economic burdens associated with consultation requirements. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are required by this proposed rule beyond those already required by existing 50 CFR 402 regulations, nor does the proposed rule contain any recordkeeping requirements as defined by the Paperwork Reduction Act of 1980. Further, this rule does not require a Federalism assessment under Executive Order 12612 because it would have no significant Federalism effects as described in the order. Finally, the Service has determined that the proposed regulation does not require the preparation of a Takings Implication Assessment under the requirements of Executive Order 12630, "Government Actions and Interference with Constitutionally Protected Property Rights." These counterpart regulations pertain solely to consultation coordination procedures and the procedures have no impact on personal property rights.

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List of Subjects in 50 CFR Part 402

Endangered and threatened species.

Proposed Regulation Promulgation

Accordingly, the FWS and NMFS hereby propose to amend part 402, title 50 of the Code of Federal Regulations, as set forth below:

PART 402—[AMENDED]

1. The authority citation for part 402 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. Revise § 402.04 to read as follows:

§ 402.04 Counterpart regulations.

The consultation procedures set forth in this part may be superseded for a particular Federal agency by joint counterpart regulations issued by, the Fish and Wildlife Service, and the National Marine Fisheries Service with the written concurrence of the action agency published with that counterpart regulation. Such counterpart regulations shall be published in the **Federal Register** in proposed form and shall be subject to public comment for at least 60 days before final rules are published. Counterpart regulations appear in subpart C of this part.

3. Add a new subpart C—Counterpart Regulations and sections 402.20 to 402.29 to read as follows:

§ 402.20 Scope.

The counterpart regulations in this subpart supplement and, where applicable, set forth an alternative to the Endangered Species Act (ESA) consultation regulations found in subparts A and B of this part for the Forest Service (FS), Department of Agriculture and the Bureau of Land Management (BLM), Department of the Interior.

(a) Sections 402.22 and 402.23 of the counterpart regulations in this subpart address consultation agreements and non-site-specific consultations, respectively. Both facilitate ESA consideration and coordination sooner than is required by subpart A and B of this part. Section 402.22 establishes a process by which FS and BLM, in coordination with the Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS), determine whether and in what manner to engage in non-site-specific consultations related to their land management planning efforts pursuant to, *inter alia*, the Endangered Species Act, 16 U.S.C. 1531, *et seq.*, the National Forest Management Act of 1976, 16 U.S.C. 1604 and 36 CFR 219, the Federal Land and Policy Management Act of 1976, 43 U.S.C. 1701–1784 and the Oregon and California Lands Act, 43 U.S.C. 1181a. Section 402.23 provides a framework for non-site-specific ESA consultation which may result in the identification of protective parameters for listed species and critical habitat.

(b) Section 402.24 addresses site-specific consultations and conferences. Section 403.24(a) provides an alternative to subparts A and B of this part governing how ongoing and proposed site-specific actions shall be conducted where sufficient parameters

have been identified in a relevant non-site-specific consultation. Sections 402.24(b), (c), and (d) provide a process for reviewing ongoing site-specific actions when consultation becomes mandatory and no sufficient parameters have been identified.

§ 402.21 Definitions.

Many of the terms used in the regulations in this subpart are defined in section 402.02. In addition, the terms defined in this section are applicable to this subpart.

(a) *Action agency* means either the FS or the BLM.

(b) *Consultation* means all oral and written communications between the Action Agency and the Service designed to facilitate that Action Agency's compliance with the ESA. Consultation includes, but is not limited to, early, informal and formal consultation under the regulations in subpart B of this part, as well as early non-site-specific consultation as provided for in §§ 402.22 and 402.23;

(1) *Site-specific consultation* means any consultation the subject of which is a particular site-specific action or group of site-specific actions that may affect listed species or critical habitat; and

(2) *Non-site-specific consultation* means any consultation undertaken the subject of which is something other than a particular site-specific action or group of site-specific actions.

(c) *Is likely to adversely affect* means the appropriate conclusion if an adverse effect to listed species or critical habitat may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions. In the event the overall effect of the proposed action is beneficial to the listed species or critical habitat, but also likely to cause some adverse effects, then the proposed action "is likely to adversely affect" the listed species or critical habitat. An "is likely to adversely affect" determination requires formal consultation.

(d) *Is not likely to adversely affect* means the appropriate conclusion when effects on the species or critical habitat are expected to be beneficial, discountable, or insignificant. Beneficial effects have contemporaneous positive effects without any adverse effects to the species or habitat. Insignificant effects relate to the size of the impact (and should not reach the scale where take occurs, as defined in 16 U.S.C. 1532(19) and 50 CFR 17.3). Discountable effects are those extremely unlikely to occur. Based on best judgment, a person would not be able to meaningfully measure, detect, or evaluate insignificant effects or expect discountable effects to occur.