

(e) *Site-specific action* means any FS or BLM action or group of actions (as defined in § 402.02) that has physical, biological, or chemical effects on the environment;

(1) Any other FS and BLM action is a non-site-specific action;

(2) *Ongoing site-specific action* means a site-specific action that is being executed or one for which a project level decision has been made or that otherwise has been authorized by the Action Agency but has not yet been completed at the time consultation is initiated (e.g., actions that were authorized, funded, or initiated prior to the relevant triggering event and in which there is discretionary Federal involvement or control); and

(3) *Proposed site-specific action* means a site-specific action that has not yet been finally authorized by the Action Agency.

#### **§ 402.22 Consultation/conference agreement.**

(a) *Commencement of discussions.* (1) Unless the event was contemplated and addressed in a prior consultation/conference agreement in accordance with this section, the Action Agency and Service shall discuss and determine the most efficient method for fulfilling the purposes of the ESA consistent with the regulations in this subpart, as soon as practicable after any of the following events:

(i) Publication of a proposed rule to list a species or to designate critical habitat;

(ii) Listing of a species or designation of critical habitat;

(iii) Formal proposal of a new, or amendment or revision of an existing, BLM or FS land management planning decision, including but not limited to the proposal of a land and resource management plan, resource management plan, or a protective initiative, but not including instructional memoranda, policies, directives or revisions to agency manuals; or

(iv) When, at any time, an Action Agency or the Service requests such discussions.

(2) Where any of these events affects more than one administrative unit of the Action Agency or the Service, these discussions shall be conducted jointly by, or on behalf of, all such units.

(b) *Consultation/conference agreement.* Unless a different time frame is mutually agreed to by the Action Agency and the Service, the results of these discussions shall be embodied in a document (hereinafter "consultation/conference agreement"), to be

completed within 45 days of the events listed in paragraph (a) of this section.

(1) The consultation/conference agreement shall:

(i) Identify the land management planning documents relevant to the present or anticipated need for ESA consultation/conference;

(ii) Where a land management planning document incorporates authorization for a relevant site-specific activity, identify the portions of the document that embody land management planning decisions and those that embody the site-specific decisions that must be the subject of site-specific consultation under subparts A and B of this part, as supplemented by § 402.24;

(iii) Determine whether and in what manner non-site-specific consultation will be undertaken, including a list of the species that will be considered and a description of the geographic area that is to be encompassed by the consultation, and set forth a preliminary schedule for and description of each major step required for each selected level of consultation;

(iv) Provide a description of how ESA requirements for applicant participation, if any, will be fulfilled;

(v) Establish any necessary and appropriate timeframes for completing any review of ongoing site-specific actions under § 402.24, and

(vi) If practicable within the period set forth in paragraph (b) of this section, incorporate parameters that will be used in making a determination for listed species of "not likely to adversely affect" or "imminent threat," or for developing any appropriate standards for proposed or other species, in future site-specific consultation and conferences under the regulations in this subpart related to the same species and same geographic areas covered by the consultation/conference agreement.

(2) The consultation agreement may reflect consideration of a number of factors, including the types, impacts, and numbers of ongoing actions; the biology, ecology, distribution, and abundance of the relevant Category 1 candidate, proposed or listed species and proposed or designated critical habitat; human resource consideration; the timing of the consultation; National Environmental Policy Act, 43 U.S.C. 4321-4370(d), requirements for the Action Agency; data collection requirements; and existing and forthcoming protective strategies for the listed species.

(3) If the representatives of the Action Agency and the Service in the discussions required in paragraph (a) of this section cannot agree on the terms of

the consultation/conference agreement, agreement shall promptly be reached jointly by the heads of the applicable agencies, or their designees.

(4) The time frames for development of, and the terms of, the consultation/conference agreement may be modified or deviated from upon mutual written agreement of the Action Agency and the Service.

#### **§ 402.23 Non-site-specific consultation/conference.**

(a) *Action agency responsibilities.* If the agencies elect to conduct non-site-specific consultation/conference, the Action Agency shall submit to the Service, by the date set forth in the consultation/conference agreement, or the date as modified by mutual agreement, the following information and documents:

(1) A copy of all documents, unless the document is already in the possession of the Service, deemed by the Action Agency to be relevant to the non-site-specific consultation/conference, including but not limited to, scientific documents and data, reports, draft environmental impact statements or assessments, forest plans, and resource management plans, or strategies, including initiatives designed to address the needs of the species identified in the consultation/conference agreement, which shall be the best scientific and commercial data available at the time of submission of the information required in this paragraph;

(2) A written statement of how any non-site-specific level decisions interact, if at all, with decisions at the site-specific level and with the species identified in the consultation/conference agreement and proposed or designated critical habitat of concern;

(3) Identification of any parameters such that site-specific actions consistent with those parameters are not likely to adversely affect listed species and/or are not likely to jeopardize the continued existence of proposed species or adversely modify or destroy critical habitat.

(b) *Service responsibilities.* Within 135 days of receiving the information required under paragraph (a) of this section, the Service shall:

(1) Issue a written statement detailing whether the parameters identified pursuant to paragraph (a)(3) of this section provide appropriate parameters such that site-specific actions consistent with those parameters are not likely to adversely affect listed species or critical habitat and/or are not likely to jeopardize and continued existence of