

proposed species or adversely modify or destroy proposed critical habitat; or

(2) If either there is no existing or proposed decision document, or the parameters identified in paragraph (a)(3) of this section are determined to be inadequate, provide a description of parameters sufficient under paragraph (a)(3) of this section, to the extent possible and to the degree permitted by the information provided by the Action Agency.

§ 402.24 Site-specific consultation/conference; ongoing site-specific actions during consultation.

(a) *Site-specific consultation/conference.* For site-specific actions that conform with parameters identified as sufficient under § 402.23, the Action Agency will provide, 30 days prior to the decision document for proposed actions, or pursuant to the time frames established in a consultation/conference agreement for ongoing actions, a written notification to the Service of the Action Agency determination and rationale that the action is in conformance with relevant parameters. This notification ends consultation under section 7(a)(2) of the ESA. Completion of consultation fulfills the Action Agency's responsibility to comply with section 7(d) of the ESA. If the Service disagrees with the Action Agency's determination, it may request reinitiation of informal or formal consultation as appropriate, under this part and provide a rationale for its request. Any ongoing or proposed site-specific action that is not in conformance with parameters identified under § 402.23 is subject to the consultation requirements under subparts A and B of this part, as supplemented by this section.

(b) *Identification of ongoing activities.* Pursuant to the timeframes established in the relevant consultation/conference agreement, the Action Agency will provide the Service with a written list of all ongoing site-specific actions relevant to the triggering event that may affect a listed species or its critical habitat. Such ongoing site-specific

actions are ones that were authorized, funded, or initiated prior to the relevant triggering event and in which there is discretionary Federal involvement or control. Actions identified on the written list may continue under the regulations in this subpart during consultation without interruption unless suspended pursuant to paragraphs (c) or (d) of this section. The Action Agency should provide notice to affected parties consistent with appropriate agency procedures.

(c) *Imminent threats.* Pursuant to the timeframes establishment in the relevant consultation/conference agreement, the Action Agency and the Service shall review the actions identified pursuant to paragraph (b) of this section. For any action that both the Service and Action Agency agree may present an imminent threat to a listed species or its critical habitat, the Action Agency will, as soon as practicable and consistent with its legal authorities and obligations, initiate the appropriate administrative process to review whether the action needs to be modified, altered, or, if necessary, terminated. The Action Agency also shall initiate formal consultation/conference under §§ 402.10 and 402.14 as appropriate. When it is consistent with its legal authorities and obligations, the Action Agency should suspend any such action and any associated irretrievable or irreversible commitments of resources that would foreclose the formulation or implementation of reasonable and prudent alternatives under section 7(d) of the ESA, until it is determined that the action is not likely to jeopardize the continued existence of a listed species or result in the adverse modification or destruction of its critical habitat.

(d) *Likely to adversely affect actions.* Pursuant to the timeframes established in the relevant consultation/conference agreement, the Action Agency shall review the actions identified pursuant to paragraph (b) of this section, except for those already identified as imminent threats under paragraph (c) of this section, and identify for the Service

those activities that are likely to adversely affect listed species or critical habitat. For any action so identified by the Action Agency, or for which the Service provides a written objection to its continuance and the rationale therefore, the Action Agency will, as soon as practicable and consistent with its legal authorities and obligations, initiate the appropriate administrative process to review whether the action, and any associated irretrievable or irreversible commitments of resources that would foreclose the formulation or implementation of reasonable and prudent alternatives under section 7(d) of the ESA, needs to be modified, altered, or, if necessary, terminated. The Action Agency also shall initiate formal consultation/conference under §§ 402.10 and/or 402.14.

§ 402.25 Timeframes.

All timeframes set forth in §§ 402.23 and 402.24 of this subpart may be modified by mutual agreement.

§ 402.26 Applicability.

The regulations in this subpart are applicable to the FS and BLM only where an event identified in § 402.22(a) occurs after [the effective date of the final rule].

§§ 402.27–402.29 [Reserved]

Dated: July 7, 1995.

George Frampton,

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Dated: June 30, 1995.

James R. Lyons,

Undersecretary, Natural Resources Environment.

Dated: July 3, 1995.

Rolland A. Schmitten,

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Dated: July 6, 1995.

Bob Armstrong,

Assistant Secretary for Land and Minerals Management.

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