

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service**

RIN 1018-AJ02

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 402**

[Docket No. 030506115-3115-01]

RIN 0648-AR05

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

**AGENCIES:** U.S. Fish and Wildlife Service, Interior; Bureau of Land Management, Interior; National Park Service, Interior; Bureau of Indian Affairs, Interior; Forest Service, Agriculture; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** As part of the President's Healthy Forests Initiative announced in August 2002, the U.S. Department of the Interior, Fish and Wildlife Service (FWS) and the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) (singly or jointly, Service), in cooperation with the U.S. Department of Agriculture, Forest Service (FS) and the Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), and National Park Service (NPS), are proposing joint counterpart regulations for consultation under section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA) to streamline consultation on proposed projects that support the National Fire Plan (NFP), an interagency strategy approved in 2000 to reduce risks of catastrophic wildland fires and restore fire-adapted ecosystems. These counterpart regulations, authorized in general at 50 CFR 402.04, will provide an optional alternative to the existing section 7 consultation process described in 50 CFR part 402, subparts A and B. The counterpart regulations complement the general consultation regulations in part 402 by providing an alternative process for completing section 7 consultation for agency projects that authorize, fund, or carry out actions that support the NFP. The alternative consultation process contained in these proposed counterpart regulations will eliminate the need to conduct informal consultation and

eliminate the requirement to obtain written concurrence from the Service for those NFP actions that the Action Agency determines are "not likely to adversely affect" (NLAA) any listed species or designated critical habitat.

**DATES:** Comments on this proposal must be received by August 4, 2003, to be considered in the final decision on this proposal.

**ADDRESSES:** Comments or materials concerning the proposed rule should be sent to the Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203. Comments can also be accepted if submitted via e-mail to [healthyforests@fws.gov](mailto:healthyforests@fws.gov). Comments and materials received in conjunction with this rulemaking will be available for inspection, by appointment, during normal business hours at the above address.

The FWS has agreed to take responsibility for receipt of public comments and will share all comments it receives with NMFS and the Action Agencies. All the agencies will work together to compile, analyze, and respond to public comments.

**FOR FURTHER INFORMATION CONTACT:** Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, at the above address (Telephone 703/358-2171, Facsimile 703/358-1735) or Phil Williams, Chief, Endangered Species Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 (301/713-1401; facsimile 301/713-0376).

**SUPPLEMENTARY INFORMATION:****Implementation of National Fire Plan**

In response to several years of catastrophic wildland fires throughout the United States culminating in the particularly severe fire season in 2000, when over 6.5 million acres of wildland areas burned, President Clinton directed the Departments of the Interior and Agriculture to develop a report outlining a new approach to managing wildland fires and restoring fire-adapted ecosystems. The report, entitled *Managing the Impact of Wildfires on Communities and the Environment*, was issued September 8, 2000. This report set forth ways to reduce the impacts of fires on rural communities, a short-term plan for rehabilitation of fire-damaged ecosystems, and ways to limit the introduction of invasive species and address natural restoration processes. The report, and the accompanying budget requests, strategies, plans, and direction, have become known as the

NFP. The NFP is intended to reduce risk to communities and natural resources from wildland fires through rehabilitation, restoration and maintenance of fire-adapted ecosystems, and by the reduction of accumulated fuels or highly combustible fuels on forests, woodlands, grasslands, and rangelands.

In August 2002, during another severe wildland fire season in which over 7.1 million acres of wildlands burned, President Bush announced the Healthy Forests Initiative. The initiative was intended to accelerate implementation of the fuels reduction and ecosystem restoration goals of the NFP in order to minimize the damage caused by catastrophic wildfires by reducing unnecessary regulatory obstacles that have at times delayed and frustrated active land management activities. Because of nearly a century of policies to exclude fire from performing its historical role in shaping plant communities, fires in our public forests and rangelands now threaten people, communities, and natural resources in ways never before seen in our Nation's history.

Many of the Nation's forests and rangelands have become unnaturally dense as a result of past fire suppression policies. Today's forests contain previously unrecorded levels of fuels, while highly flammable invasive species now pervade many rangelands. As a result, ecosystem health has suffered significantly across much of the Nation. When coupled with seasonal droughts, these unhealthy forests and rangelands, overloaded with fuels, are vulnerable to unnaturally severe wildland fires. The geographic scope of the problem is enormous, with estimates approaching 200 million acres of forest and rangeland at risk of catastrophic fire. The problem has been building across the landscape for decades. Its sheer size makes it impossible to treat all the acres needing attention in a few years or even within the next decade.

In 2002 alone, the Nation experienced over 88,000 wildland fires that cost the Federal government \$1.6 billion to suppress. Many of these wildfires significantly impacted threatened or endangered species. The Biscuit Fire burned an area of 499,570 acres in Oregon and California that included 49 nest sites and 50,000 acres of designated critical habitat for the threatened northern spotted owl and 14 nesting areas and 96,000 acres of designated critical habitat for the threatened marbled murrelet. The estimated fire suppression cost was \$134,924,847. The Rodeo-Chediski fire in Arizona, the largest fire in the State's post-settlement