

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.):

(a) These counterpart regulations will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required. We expect that these counterpart regulations will not result in any significant additional expenditures by entities that develop formalized conservation efforts.

(b) These counterpart regulations will not produce a Federal mandate on State, local, or tribal governments or the private sector of \$100 million or greater in any year; that is, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. These counterpart regulations impose no obligations on State, local, or tribal governments.

Takings

In accordance with Executive Order 12630, these counterpart regulations do not have significant takings implications. These counterpart regulations pertain solely to ESA section 7 consultation coordination procedures, and the procedures have no impact on personal property rights.

Federalism

In accordance with Executive Order 13132, these counterpart regulations do not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Commerce regulations under section 7 of the ESA, we coordinated development of these counterpart regulations with appropriate resource agencies throughout the United States.

Civil Justice Reform

In accordance with Executive Order 12988, this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a)

and 3(b)(2) of the Order. We propose these counterpart regulations consistent with 50 CFR 402.04 and section 7 of the ESA.

Paperwork Reduction Act

This proposed rule would not impose any new requirements for collection of information that require approval by the OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). This proposed rule will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

National Environmental Policy Act

These counterpart regulations have been developed by FWS and NMFS, jointly with FS, BIA, BLM, and NPS according to 50 CFR 402.04. The FWS and NMFS are considered the lead Federal agencies for the preparation of this proposed rule, pursuant to 40 CFR 1501. We have analyzed these counterpart regulations in accordance with the criteria of the National Environmental Policy Act (NEPA), the Department of the Interior Manual (318 DM 2.2(g) and 6.3(D)), and National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216–6 and have determined that an environmental assessment will be prepared prior to finalization of the rule.

Government-to-Government Relationship With Indian Tribes

In accordance with the Secretarial Order 3206, “American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act” (June 5, 1997); the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951); E.O. 13175; and the Department of the Interior’s 512 DM 2, we understand that we must relate to recognized Federal Indian Tribes on a Government-to-Government basis. However, these counterpart regulations do not directly affect Tribal resources. These counterpart regulations may have an indirect effect on Native American Tribes as the Bureau of Indian Affairs may, at its discretion, implement the procedures outlined in the counterpart regulations for those activities affecting Tribal resources that they may authorize, fund, or carry out under the NFP. The intent of these counterpart regulations is to streamline the

consultation process; therefore, the extent of this indirect effect will be wholly beneficial.

List of Subjects in 50 CFR Part 402

Endangered and threatened species.

Proposed Regulation Promulgation

Accordingly the Service proposes to amend part 402, title 50 of the Code of Federal Regulations as follows:

PART 402—[AMENDED]

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

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

2. Add a new Subpart C to read as follows:

Subpart C—Counterpart Regulations for Implementing the National Fire Plan

- 402.30 Definitions.
- 402.31 Purpose.
- 402.32 Scope.
- 402.33 Procedures.
- 402.34 Oversight.

Subpart C—Counterpart Regulations for Implementing the National Fire Plan**§ 402.30 Definitions.**

The definitions in § 402.02 are applicable to this subpart. In addition, the following definitions are applicable only to this subpart.

Action Agency refers to the Department of Agriculture Forest Service (FS) or the Department of the Interior Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), or National Park Service (NPS).

Alternative Consultation Agreement (ACA) is the agreement described in § 402.33 of this subpart.

Fire Plan Project is an action determined by the Action Agency to be within the scope of the NFP as defined in this section.

National Fire Plan (NFP) is the September 8, 2000, report to the President from the Departments of the Interior and Agriculture entitled *Managing the Impact of Wildfire on Communities and the Environment* outlining a new approach to managing fires, together with the accompanying budget requests, strategies, plans, and direction, or any amendments thereto.

Service Director refers to the FWS Director or the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration.

§ 402.31 Purpose.

The purpose of these counterpart regulations is to improve the consultation process under section 7 of