

consultation with the Service, the action agency makes a determination that a proposed action is "not likely to adversely affect" any listed species or designated critical habitat and obtains written concurrence from the Service for the NLAA determination. The alternative consultation process contained in these counterpart regulations will allow the Service to provide training, oversight, and monitoring to an Action Agency through an alternative consultation agreement (ACA) that enables the Action Agency to make an NLAA determination for a project implementing the NFP without informal consultation or written concurrence from the Service.

Using the existing consultation process, the Action Agencies have consulted with the Service on many thousands of proposed actions that ultimately received written concurrence from the Service for NLAA determinations. Those projects had only insignificant or beneficial effects on listed species or posed a discountable risk of adverse effects. The concurrence process for such projects has diverted some of the consultation resources of the Service from projects in greater need of consultation. With the anticipated increase in fire plan projects, the concurrence process could cause delays. These counterpart regulations are being implemented to proactively reduce these anticipated delays and to increase the Service's capability to focus on Federal actions requiring formal consultation by eliminating the requirement to provide written concurrence for actions within the scope of these counterpart regulations.

The Action Agencies have engaged in thousands of formal and informal consultations with the Service in the 30 years since the passage of the ESA, and have developed substantial scientific, planning, mitigation, and other expertise to support informed decision-making and to meet their responsibilities under ESA section 7 to avoid jeopardy and contribute to recovery of listed species. To meet their obligations, the Action Agencies employ large staffs of qualified, experienced, and professional wildlife biologists, fisheries biologists, botanists, and ecologists to help design, evaluate, and implement proposed activities carried out under land use and resource management plans. All of the Action Agencies consult with the Service on actions that implement land use and resource management plans that contribute to the recovery of proposed and listed species and the ecosystems upon which they depend. In particular, the informal consultation and

concurrence process has given the Action Agencies considerable familiarity with the standards for making NLAA determinations for their proposed actions.

The Action Agencies have developed familiarity with the standards over time through various activities. The Action Agencies develop proposals and evaluate several thousand actions for possible effects to listed species and designated critical habitat. Agency biologists are members of listed species recovery teams, contribute to management plans that provide specific objectives and guidelines to help recover and protect listed species and designated critical habitat, and cooperate on a continuing basis with Service personnel. In many parts of the country, personnel from the Action Agencies and the Service participate in regular meetings to identify new management projects and the effects to proposed and listed species through formalized streamlined consultation procedures.

The Action Agencies' established biological expertise and active participation in the consultation process provides a solid base of knowledge and understanding of how to implement section 7 of the ESA. By taking advantage of this expertise within the Action Agencies, the counterpart regulations process will help ensure more timely and efficient decisions on planned NFP actions while retaining the protection for listed species and designated critical habitat required by the ESA and other applicable regulations. The Service can rely upon the expertise of the Action Agencies to make NLAA determinations that are consistent with the ESA and its implementing regulations. Moreover, the Action Agencies are committed to implementing this authority in a manner that will be equally as protective of listed species and designated critical habitat as the current procedures that require written concurrence from the Service.

The Healthy Forests Initiative builds from the recognition that more timely environmental reviews of proposed fire plan projects will provide greater benefits to the range, forest lands, and wildlife by reducing the risk of catastrophic wildfire while the reviews are pending. These counterpart regulations provide an additional tool for accomplishing faster reviews. Streamlining the NLAA concurrence process offers a significant opportunity to accelerate NFP projects while providing equal or greater protection of the resources. Under current procedures, the Action Agencies must

already complete and document a full ESA analysis to reach an NLAA determination. The counterpart regulations permit a project to proceed following an Action Agency's NLAA determination without an overlapping review by the Service, where the Service has provided specific training and oversight to achieve comparability between the Action Agency's determination and the likely outcome of an overlapping review by the Service. These counterpart regulations should significantly accelerate planning, review, and implementation of NFP actions, and by doing so, should contribute to achieving the habitat management and ecosystem restoration activities contemplated under the NFP.

#### *Summary of Comments Received*

On June 5, 2003 (68 FR 33806), we proposed the rule that would establish the joint counterpart regulations for consultation under section 7 of the ESA to streamline consultation on proposed projects that support the NFP. The comment period closed on August 4, 2003. On October 9, 2003 (68 FR 58298), we reopened the comment period on the proposed rule and provided a notice of availability for the Environmental Assessment. The second comment period closed on November 10, 2003. During these two comment periods, the Service received more than 50,000 comments on the proposed rule from a large variety of entities, including State, County, Tribal agencies, industry, conservation groups, religious groups, coalitions, and private individuals. The Service and the Action Agencies considered all of the information and recommendations received from all interested parties on the proposed regulation during the public comment period and appreciated the comments received on the proposed rule. The Service received numerous comments on the scope of the National Fire Plan, for example, appropriate fire cycles, thinning and restoration practices, which were beyond the narrow scope of the proposed rulemaking for the counterpart regulations.

The following is a summary of the comments on the proposed counterpart regulations, and the Service's response.

#### **State and Tribe Comments**

We received comments from three States and two Tribal agencies.

*Issue:* One State recommended including the State fish and wildlife agencies during the development of the ACAs and, where appropriate, during the development of documentation in support of NLAA determinations. Including the States would better ensure