

that the best available scientific information is used during the determination analysis by the Action Agencies.

Response: We agree that the State agencies likely have biological information that will be relevant in making an NLAA determination. The Services currently have a joint policy (59 FR 34275) in which we request any information from the State that might be relevant, as well as notify the State of any action that might adversely affect any proposed or listed species or designated critical habitat. The Service will encourage each of the Action Agencies to embrace this policy as a component of the ACA.

Issue: One State, and several commenters, expressed concern that this proposed regulation does not go far enough to improve the overall efficiency of the consultation process and, therefore, should be opened up to all projects, not just fire plan projects. A few commenters suggested including the Corps of Engineers and Environmental Protection Agency in the list of Action Agencies.

Response: These counterpart regulations have been proposed as part of the President's Healthy Forests Initiative to accelerate the rate at which fire plan projects can be implemented. Once these counterpart regulations are adopted and implemented, the Services believe that other agencies may decide that similar counterpart regulations would help to expedite other types of actions. The EPA has already published an advance notice of rulemaking for developing counterpart regulations for pesticides (68 FR 3785, January 24, 2003). The Services will take up any such proposals from other agencies in the future as circumstances may warrant.

Issue: One State and several commenters were concerned that these counterpart regulations relieve the Service of its duties and the resources that will be spent creating a new process could be used more efficiently by the Service to carry out its duties under the ESA.

Response: We agree that the Services will likely experience a small short-term increase in administrative burden as they begin to implement the training and oversight components of the regulations and ACAs. However, this short term burden will be more than balanced out by a substantial long term increase in Service efficiency resulting from a reduction in resources required to review projects that ultimately receive a NLAA concurrence letter. We believe that by removing the need to provide NLAA concurrence letters on

NFP projects, the Services will be able to devote greater resources to analyzing and coordinating on projects that do have adverse effects on listed species and designated critical habitat. We believe this shift in resources will not only accelerate NFP projects, but will also generally expedite consultations on other projects, which will make the most efficient use of the Services time. This will ultimately provide more conservation to listed species, thus fulfilling the objectives of the ESA.

Issue: The two Tribal comments stated that the Action Agency will still need to complete a biological assessment for its action. In addition, both tribal commenters requested government-to-government consultation.

Response: We agree that an Action Agency will still need to complete a biological assessment for an action when required by the ESA. The regulations at 50 CFR 402.12 require the preparation of a biological assessment for those Federal actions that are "major construction activities." Given that these counterpart regulations only address those fire plan projects that are not likely to adversely affect listed species or critical habitat, we do not anticipate that a large majority of these actions would otherwise require preparation of a biological assessment.

The standards for making an NLAA determination remain unchanged by these counterpart regulations. These counterpart regulations do not change the analysis that is conducted for determining how a proposed project affects listed species or critical habitat. Therefore, this counterpart regulation will maintain the same level of protection for listed species or designated critical habitat. As such, we do not believe that tribal resources will be affected by implementation of this rule and government-to-government consultation is not necessary at this stage in the process.

General Comments

Issue: Many commenters felt that the proposed counterpart regulations will give some interest groups, such as logging companies and other commercial interests, free reign over public land, which will increase commercial timber sales, and that this result is not in the best interest of the species or the public.

Response: This regulation will apply only to those projects that are within the scope of the NFP and are not likely to adversely affect listed species or critical habitat. Commercial timber sales that adversely affect listed species and designated critical habitat will still need

to be analyzed through formal consultation. We believe that implementation of the counterpart regulations will allow the Service to focus its efforts on Federal actions that are likely to adversely affect listed species and critical habitat. This will ultimately benefit listed species.

Issue: Several commenters noted that the proposed rule has failed to offer any empirical evidence substantiating the claim that the regulatory obstacles have unnecessarily delayed active land management activities.

Response: The Healthy Forests Initiative is intended to accelerate implementation of the fuels reduction and ecosystem restoration goals of the NFP in order to minimize damage caused by catastrophic wildfires. Accordingly, the issue is not whether the regulatory process has delayed NFP projects, but rather whether it can be streamlined so as to expedite the projects. The number of consultations conducted for NFP projects is currently relatively low; however the Service anticipates that the number of consultations requested for projects that implement the NFP will increase substantially in the future, as additional funding and effort is directed toward implementation of the NFP. Due to the beneficial effects that this initiative will have to fish and wildlife resources, the Services are ensuring that actions supporting the NFP that are NLAA listed species or critical habitat are not delayed.

Issue: Many commenters believe that the Action Agencies do not have the expertise to make the determinations without concurrence from the Service. They believe that the Service is the expert agency and without the Service's input many of the decisions will have a negative impact on listed species. In particular, the commenters believe that the Action Agencies do not know the biology of the species or the other indirect or cumulative effects that should be factored into the analysis.

Response: The Action Agencies employ large staffs of professional wildlife biologists, botanists, and ecologists to meet their obligations under the Act and other natural resource management laws they implement. The primary responsibility of these professionals is to evaluate how proposed projects will affect listed species and critical habitat.

The counterpart regulations contain a process for making sure that the Action Agencies have the necessary skills to make the NLAA determinations without Service concurrence. First, the Service and the Action Agencies will jointly develop a training program that will