

adverse comment within the specified time period, a notice withdrawing the direct final rule will be published in the final rule section of the **Federal Register** and a notice of proposed rulemaking will be issued in the proposed rule section of the **Federal Register**.

(e) An "adverse" comment for the purpose of this subpart means any comment that is critical of the rule, that suggests that the rule should not be adopted, or suggests a change that should be made in the rule. A comment suggesting that the policy or requirements of the rule should or should not also be extended to other Departmental programs outside the scope of the rule is not adverse.

Issued in Washington, DC on this 19th day of July, 1995.

Federico Peña,

Secretary.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Marine Fisheries Service

50 CFR Part 402

RIN 1018-AD32

Joint Counterpart Endangered Species Act Section 7 Consultation Regulations

AGENCIES: Fish and Wildlife Service, Interior; and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule.

SUMMARY: With the concurrence of the U.S. Department of Agriculture, Forest Service (FS) and the Department of the Interior, Bureau of Land Management (BLM), the U.S. Fish and Wildlife Service (FWS) and the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) propose to promulgate counterpart section 7 consultation regulations (50 CFR 402) under the Endangered Species Act of 1973 to establish an alternate consultation process. These regulations supplement the more general consultation regulations in Part 402 to provide for a more effective and efficient process to

meet the specific needs of BLM and FS programs.

DATES: Comments on this proposal must be received by October 3, 1995, in order to be considered in the final decision on this proposal.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, N.W., Washington, DC 20240. Comments and materials received will be available for public inspection, by appointment, during normal business hours in Room 452, 4401 North Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, at the above address (703/358-2171; facsimile 703/358-1735) or Robert C. Ziobro, Endangered Species Division, NMFS, 1335 East-West Highway, Silver Spring, MD 20910 (301/713-1401 facsimile 301/713-0376).

SUPPLEMENTARY INFORMATION:

Background

These proposed joint counterpart Endangered Species Act (ESA) consultations procedures govern ESA section 7(a) consultation for FS and BLM. The procedures differ from the existing procedures in part 402 subparts A and B in that they encourage ESA consultation well before project-level decisions are made and provide a framework for consultation on program-level or ecosystem-level decisions, as opposed to project-level decisions. This early consultation at the program-level facilitates future consultation at the project-level and these procedures describe how that streamlining is accomplished. In addition, while the regulations at part 402 subparts A and B are silent as to whether ongoing actions can continue during consultations, these regulations expressly address that issue and specify the measures the agencies will take regarding ongoing actions once ESA consultation at the project-level becomes mandatory.

Under these procedures, FS and BLM and the appropriate consulting Service (either FWS or NMFS) are required to enter into a consultation agreement, unless they have already done so for that species or decision, when (1) a new species is proposed for listing or is listed; (2) critical habitat is proposed for designation or is designated; (3) a revision or amendment of a land planning document is formally announced; or (4) FS, BLM or one of the Services requests a consultation

agreement. In this agreement, the agencies choose how they will conduct program-level and project-level consultation. That is, they decide whether project-level (which the procedures call non-site-specific) consultation and when project-level (which these procedures call site-specific consultation) consultation will occur. The agreement sets a schedule for the chosen manner of consultation and all subsequent actions related to ongoing activities.

The objective of non-site specific consultation is to identify standards and guidelines or parameters that then can be applied to site-specific consultations. Where the parameters are identified as adequate to avoid adverse effects to the listed species in the non-site-specific consultation by the appropriate Service, the parameters are then used to facilitate site-specific consultation. For those actions that are in conformance with adequate parameters, consultations is concluded when FS and BLM notify the appropriate Service of the conforming action and provide the Service with the basis for that decision. Where no adequate parameters have been identified in a non-site-specific consultation, the action agencies are required to conduct consultation/conference pursuant to sections 402.10 and/or 402.14 for any project-level decisions.

The procedures address the measures the agencies are to take with respect to ongoing actions when consultation becomes mandatory under section 402.14. The procedures require the identification of all ongoing actions that may affect the listed species and an initial determination of which actions represent an imminent threat to the listed species. The action agencies are required to take all possible steps to halt or modify these imminent threat actions. The action agencies are required then to identify all actions that are likely to adversely affect the species in question and to review whether to take steps to halt or modify those actions as well. All other ongoing actions that are not halted under these procedures may go forward during consultation. Provisions for counterpart section 7 consultation procedures are set forth in section 402.04. Such regulations supersede consultation regulations at 50 CFR 402, subpart B.

As part of their land management planning processes, the FS prepares Land and Resource Management Plans and the BLM prepares Resource Management Plans. Plans identify general land-use purposes or allocations; future conditions that are desired on specific lands; goals and

objectives for resource conditions on specific lands; and standards, guidelines, or other mechanisms that govern activities conducted on lands managed by these agencies in the future. Plans provide the general framework under which those site specific activities are developed over a period of several years.

Because Plans do not normally prescribe specific land management activities, there is a significant level of uncertainty associated with the environmental consequences of Plans. This uncertainty is a particular problem when the BLM or FS try to fulfill their obligation to consult with the FWS and/or NMFS and assure that their activities are not likely to jeopardize the continued existence of threatened or endangered species since site-specific details are not often known when consultations are initiated. Because Plans are operational for a period covering several years, new species may be added to the list of threatened and endangered species, or significant new information may become available and re-evaluation of the effects of Plans on listed, proposed, or Category 1 species, and proposed or listed critical habitat may be required.

ESA section 7(a)(2) requires that "each Federal agency shall, in consultation with and with the assistance of the Secretary [of the Interior or Commerce] insure that any action authorized, funded, or carried out by such agency * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat of such species." 16 U.S.C. 1536(a)(2). ESA section 7(a)(4) requires that "[e]ach Federal agency shall confer * * * on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed * * * or result in the destruction or adverse modification of [proposed] critical habitat" for that species. 16 U.S.C. 1536(a)(4). The manner or timing of consultation and conferencing is not prescribed by statute.

The ESA consultation regulations at section 402.14 provide that ESA consultation is required for any Federal action that may affect a listed species or critical habitat. These counterpart regulations encourage consultation before there is an action that may affect a species. Section 402.10 of the regulations provides that conferencing is required for any action that is likely to jeopardize the continued existence of any proposed species or result in the adverse modification of proposed critical habitat. These regulations

encourage conferencing before an action is likely to jeopardize a proposed species or result in adverse modification of proposed critical habitat. Thus, the use of the terms "consultation" and "conferencing" in these regulations is not always equivalent to their use in the regulations at part 402 subparts A and B.

Sections 402.22 and 402.23 of these counterpart regulations facilitate and promote early consultation before it is mandatory under the ESA, as determined in the regulations at section 402.14, and establish a framework within which non-site-specific consultation may be conducted. Non-site-specific actions, as defined by these regulations, shall have no direct effect on listed species or critical habitat. Thus, the decision whether to engage in non-site-specific consultation is discretionary, that is, not required under the statute as interpreted by the part 402 subpart A and B regulations. Since non-site-specific actions themselves have no direct effect on the species, the written statement concluding non-site-specific consultation cannot provide definitive findings of effect and "jeopardy" as to the subject of consultation as can be provided in site-specific consultation.

Even though non-site-specific consultation is discretionary and cannot provide the definitive "jeopardy/no-jeopardy" determination that results from site-specific consultation, Federal agencies may elect to engage in non-site-specific consultation or conferencing even when neither consultation nor conferencing are mandatory, as determined by sections 402.10 and 402.14, to facilitate more efficient compliance with their ESA duty. Such non-site-specific consultation may provide an efficient anticipatory step to, or may be an integral part of, mandatory ESA consultation compliance. It can provide an efficient means of reviewing potential impacts to listed species on a broad scale and lead to the identification of parameters that address the needs of species throughout all or a portion of their range or within the geographic scope of the non-site specific consultation. These parameters may then be applied in site-specific consultations and conferences, thereby streamlining the process of complying with the ESA consultation requirements for site-specific actions that may affect listed species or critical habitat or jeopardize proposed species or adversely modify or destroy proposed critical habitat. Section 402.22 of these counterpart regulations provides for a consultation agreement to facilitate this process and section 402.23 provides a

framework for this discretionary non-site-specific consultation.

Section 402.24 addresses consultation as it relates to site-specific actions, where consultation is mandatory as defined by the regulations in section 402.14. Section 402.24(a) specifies how mandatory site-specific consultation shall be conducted where relevant parameters have been identified and deemed sufficient pursuant to a relevant non-site-specific consultation and an action is in conformance with those parameters. Where adequate parameters have not been developed or an action is not in conformance with those parameters, section 402.24(a) provides that consultation shall proceed as described in the part 402 subparts A and B regulations.

Once consultation becomes mandatory at the project level, certain ongoing actions may need to be suspended until the conclusion of consultation to insure the integrity of the consultation process. Sections 402.24(b), (c), and (d) provide a process for reviewing, and determining whether to halt, ongoing site-specific actions for which parameters have not been developed, once ESA consultation at the project level becomes mandatory. Since site-specific consultation at the non-site-specific level is discretionary, not mandatory, no similar provision governing review of ongoing actions is required during non-site-specific consultation.

Sections 402.24 (c) and (d) also provide that other actions associated with actions that may cause imminent threats to or are likely to adversely affect listed species or its critical habitat may need to be suspended as well during consultation. ESA consultation on imminent threat and likely to adversely affect actions (unlike ESA consultation on actions that are not likely to adversely affect listed species) have a reasonable potential to result in the identification of reasonable and prudent alternatives to the action in consultation. In such circumstances, section 7(d) of the ESA also prohibits the action agency from undertaking any irreversible and irretrievable commitments of resources associated with such actions that would foreclose the formulation or implementation of reasonable and prudent alternative.

Required Determinations

This rule was reviewed under Executive Order 12866. The Fish and Wildlife Service certifies that the proposed revisions to 50 CFR 402 will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5

U.S.C. 601 *et seq.*). Significant adverse economic impacts are not expected as a result of the proposed rule because: (1) the rule is intended to reduce or eliminate altogether the consultation requirements on numerous Federal actions under the ESA with respect to listed and proposed species; and (2) the rule amends 50 CFR 402, resulting in consultation efficiencies that will effectively reduce potential economic burdens associated with consultation requirements. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are required by this proposed rule beyond those already required by existing 50 CFR 402 regulations, nor does the proposed rule contain any recordkeeping requirements as defined by the Paperwork Reduction Act of 1980. Further, this rule does not require a Federalism assessment under Executive Order 12612 because it would have no significant Federalism effects as described in the order. Finally, the Service has determined that the proposed regulation does not require the preparation of a Takings Implication Assessment under the requirements of Executive Order 12630, "Government Actions and Interference with Constitutionally Protected Property Rights." These counterpart regulations pertain solely to consultation coordination procedures and the procedures have no impact on personal property rights.

Author

The primary authors of this proposal are Jay Slack, Department of the Interior, Fish and Wildlife Service, Division of Endangered Species, Arlington, Virginia 22203 (703/358-2106); Jim Hoff, Department of the Interior, Bureau of Land Management, Washington, D.C. 20240 (202/452-5045); Harv Forsgren, Department of Agriculture, Forest Service, Washington, D.C. 20090 (202/205-0830); Bob Ziobro, Department of commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Silver Spring, Maryland 20910 (301/713-1401).

List of Subjects in 50 CFR Part 402

Endangered and threatened species.

Proposed Regulation Promulgation

Accordingly, the FWS and NMFS hereby propose to amend part 402, title 50 of the Code of Federal Regulations, as set forth below:

PART 402—[AMENDED]

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

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

2. Revise § 402.04 to read as follows:

§ 402.04 Counterpart regulations.

The consultation procedures set forth in this part may be superseded for a particular Federal agency by joint counterpart regulations issued by, the Fish and Wildlife Service, and the National Marine Fisheries Service with the written concurrence of the action agency published with that counterpart regulation. Such counterpart regulations shall be published in the **Federal Register** in proposed form and shall be subject to public comment for at least 60 days before final rules are published. Counterpart regulations appear in subpart C of this part.

3. Add a new subpart C—Counterpart Regulations and sections 402.20 to 402.29 to read as follows:

§ 402.20 Scope.

The counterpart regulations in this subpart supplement and, where applicable, set forth an alternative to the Endangered Species Act (ESA) consultation regulations found in subparts A and B of this part for the Forest Service (FS), Department of Agriculture and the Bureau of Land Management (BLM), Department of the Interior.

(a) Sections 402.22 and 402.23 of the counterpart regulations in this subpart address consultation agreements and non-site-specific consultations, respectively. Both facilitate ESA consideration and coordination sooner than is required by subpart A and B of this part. Section 402.22 establishes a process by which FS and BLM, in coordination with the Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS), determine whether and in what manner to engage in non-site-specific consultations related to their land management planning efforts pursuant to, *inter alia*, the Endangered Species Act, 16 U.S.C. 1531, *et seq.*, the National Forest Management Act of 1976, 16 U.S.C. 1604 and 36 CFR 219, the Federal Land and Policy Management Act of 1976, 43 U.S.C. 1701-1784 and the Oregon and California Lands Act, 43 U.S.C. 1181a. Section 402.23 provides a framework for non-site-specific ESA consultation which may result in the identification of protective parameters for listed species and critical habitat.

(b) Section 402.24 addresses site-specific consultations and conferences. Section 403.24(a) provides an alternative to subparts A and B of this part governing how ongoing and proposed site-specific actions shall be conducted where sufficient parameters

have been identified in a relevant non-site-specific consultation. Sections 402.24(b), (c), and (d) provide a process for reviewing ongoing site-specific actions when consultation becomes mandatory and no sufficient parameters have been identified.

§ 402.21 Definitions.

Many of the terms used in the regulations in this subpart are defined in section 402.02. In addition, the terms defined in this section are applicable to this subpart.

(a) *Action agency* means either the FS or the BLM.

(b) *Consultation* means all oral and written communications between the Action Agency and the Service designed to facilitate that Action Agency's compliance with the ESA. Consultation includes, but is not limited to, early, informal and formal consultation under the regulations in subpart B of this part, as well as early non-site-specific consultation as provided for in §§ 402.22 and 402.23;

(1) *Site-specific consultation* means any consultation the subject of which is a particular site-specific action or group of site-specific actions that may affect listed species or critical habitat; and

(2) *Non-site-specific consultation* means any consultation undertaken the subject of which is something other than a particular site-specific action or group of site-specific actions.

(c) *Is likely to adversely affect* means the appropriate conclusion if an adverse effect to listed species or critical habitat may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions. In the event the overall effect of the proposed action is beneficial to the listed species or critical habitat, but also likely to cause some adverse effects, then the proposed action "is likely to adversely affect" the listed species or critical habitat. An "is likely to adversely affect" determination requires formal consultation.

(d) *Is not likely to adversely affect* means the appropriate conclusion when effects on the species or critical habitat are expected to be beneficial, discountable, or insignificant. Beneficial effects have contemporaneous positive effects without any adverse effects to the species or habitat. Insignificant effects relate to the size of the impact (and should not reach the scale where take occurs, as defined in 16 U.S.C. 1532(19) and 50 CFR 17.3). Discountable effects are those extremely unlikely to occur. Based on best judgment, a person would not be able to meaningfully measure, detect, or evaluate insignificant effects or expect discountable effects to occur.

(e) *Site-specific action* means any FS or BLM action or group of actions (as defined in § 402.02) that has physical, biological, or chemical effects on the environment;

(1) Any other FS and BLM action is a non-site-specific action;

(2) *Ongoing site-specific action* means a site-specific action that is being executed or one for which a project level decision has been made or that otherwise has been authorized by the Action Agency but has not yet been completed at the time consultation is initiated (e.g., actions that were authorized, funded, or initiated prior to the relevant triggering event and in which there is discretionary Federal involvement or control); and

(3) *Proposed site-specific action* means a site-specific action that has not yet been finally authorized by the Action Agency.

§ 402.22 Consultation/conference agreement.

(a) *Commencement of discussions.* (1) Unless the event was contemplated and addressed in a prior consultation/conference agreement in accordance with this section, the Action Agency and Service shall discuss and determine the most efficient method for fulfilling the purposes of the ESA consistent with the regulations in this subpart, as soon as practicable after any of the following events:

(i) Publication of a proposed rule to list a species or to designate critical habitat;

(ii) Listing of a species or designation of critical habitat;

(iii) Formal proposal of a new, or amendment or revision of an existing, BLM or FS land management planning decision, including but not limited to the proposal of a land and resource management plan, resource management plan, or a protective initiative, but not including instructional memoranda, policies, directives or revisions to agency manuals; or

(iv) When, at any time, an Action Agency or the Service requests such discussions.

(2) Where any of these events affects more than one administrative unit of the Action Agency or the Service, these discussions shall be conducted jointly by, or on behalf of, all such units.

(b) *Consultation/conference agreement.* Unless a different time frame is mutually agreed to by the Action Agency and the Service, the results of these discussions shall be embodied in a document (hereinafter "consultation/conference agreement"), to be

completed within 45 days of the events listed in paragraph (a) of this section.

(1) The consultation/conference agreement shall:

(i) Identify the land management planning documents relevant to the present or anticipated need for ESA consultation/conference;

(ii) Where a land management planning document incorporates authorization for a relevant site-specific activity, identify the portions of the document that embody land management planning decisions and those that embody the site-specific decisions that must be the subject of site-specific consultation under subparts A and B of this part, as supplemented by § 402.24;

(iii) Determine whether and in what manner non-site-specific consultation will be undertaken, including a list of the species that will be considered and a description of the geographic area that is to be encompassed by the consultation, and set forth a preliminary schedule for and description of each major step required for each selected level of consultation;

(iv) Provide a description of how ESA requirements for applicant participation, if any, will be fulfilled;

(v) Establish any necessary and appropriate timeframes for completing any review of ongoing site-specific actions under § 402.24, and

(vi) If practicable within the period set forth in paragraph (b) of this section, incorporate parameters that will be used in making a determination for listed species of "not likely to adversely affect" or "imminent threat," or for developing any appropriate standards for proposed or other species, in future site-specific consultation and conferences under the regulations in this subpart related to the same species and same geographic areas covered by the consultation/conference agreement.

(2) The consultation agreement may reflect consideration of a number of factors, including the types, impacts, and numbers of ongoing actions; the biology, ecology, distribution, and abundance of the relevant Category 1 candidate, proposed or listed species and proposed or designated critical habitat; human resource consideration; the timing of the consultation; National Environmental Policy Act, 43 U.S.C. 4321-4370(d), requirements for the Action Agency; data collection requirements; and existing and forthcoming protective strategies for the listed species.

(3) If the representatives of the Action Agency and the Service in the discussions required in paragraph (a) of this section cannot agree on the terms of

the consultation/conference agreement, agreement shall promptly be reached jointly by the heads of the applicable agencies, or their designees.

(4) The time frames for development of, and the terms of, the consultation/conference agreement may be modified or deviated from upon mutual written agreement of the Action Agency and the Service.

§ 402.23 Non-site-specific consultation/conference.

(a) *Action agency responsibilities.* If the agencies elect to conduct non-site-specific consultation/conference, the Action Agency shall submit to the Service, by the date set forth in the consultation/conference agreement, or the date as modified by mutual agreement, the following information and documents:

(1) A copy of all documents, unless the document is already in the possession of the Service, deemed by the Action Agency to be relevant to the non-site-specific consultation/conference, including but not limited to, scientific documents and data, reports, draft environmental impact statements or assessments, forest plans, and resource management plans, or strategies, including initiatives designed to address the needs of the species identified in the consultation/conference agreement, which shall be the best scientific and commercial data available at the time of submission of the information required in this paragraph;

(2) A written statement of how any non-site-specific level decisions interact, if at all, with decisions at the site-specific level and with the species identified in the consultation/conference agreement and proposed or designated critical habitat of concern;

(3) Identification of any parameters such that site-specific actions consistent with those parameters are not likely to adversely affect listed species and/or are not likely to jeopardize the continued existence of proposed species or adversely modify or destroy critical habitat.

(b) *Service responsibilities.* Within 135 days of receiving the information required under paragraph (a) of this section, the Service shall:

(1) Issue a written statement detailing whether the parameters identified pursuant to paragraph (a)(3) of this section provide appropriate parameters such that site-specific actions consistent with those parameters are not likely to adversely affect listed species or critical habitat and/or are not likely to jeopardize and continued existence of

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,

Assistant Secretary for Fish and Wildlife and Parks.

Dated: June 30, 1995.

James R. Lyons,

Undersecretary, Natural Resources Environment.

Dated: July 3, 1995.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

Dated: July 6, 1995.

Bob Armstrong,

Assistant Secretary for Land and Minerals Management.

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