

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

April 8, 2004

In Reply Refer To:
6841, 1782, 9211 (WO-230) P

EMS TRANSMISSION 04/09/2004
Information Bulletin No. 2004-088

To: All Field Officials

From: Assistant Director, Renewable Resources and Planning

Subject: Counterpart Regulations and Alternative Consultation Agreement

The U.S. Fish and Wildlife Service (FWS) and National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) (collectively referred to as the Services) in cooperation with the Bureau of Land Management (BLM), Forest Service (FS), Bureau of Indian Affairs (BIA), and National Park Service (NPS) have issued joint counterpart regulations for consultation under Section 7 of the Endangered Species Act (ESA) to streamline consultation on proposed projects that support the National Fire Plan (NFP). These counterpart regulations, authorized by 50 CFR 402.04, complement the consultation process by providing an alternative process for completing Section 7 consultation for projects that authorize, fund or carry out actions that support the NFP. The counterpart regulations eliminate the need to conduct informal consultations and obtain written concurrence from the Services for those NFP actions that the action agency determines are "not likely to adversely affect" (NLAA) listed species or designated critical habitat. The purpose of this bulletin is to inform managers and staff on how the BLM proposes to implement these counterpart regulations.

On August 22, 2002, the President announced his Healthy Forests Initiative: *An Initiative for Wildfire Prevention and Stronger Communities*. The Healthy Forests Initiative recognizes that faster environmental reviews of proposed land management projects may provide greater benefits to humans, the range, forest lands, and wildlife by reducing the risk of catastrophic wildfire while the reviews are pending. To this end, the counterpart regulations were drafted to expedite the informal Section 7 consultation process. The concurrence process for NLAA determinations has caused delays in implementation of critical projects and diverted resources from projects in greater need. The counterpart regulations may be utilized for proposed projects that support the NFP, such as hazardous fuels reduction, rehabilitation and restoration and maintenance of fire adapted ecosystems. The Final Rule for the counterpart regulations was published in the Federal Register on December 8, 2003, and became effective on January 7, 2004.

Attachment 1-1

Implementation of the counterpart regulations requires each action agency to develop an Alternative Consultation Agreement (ACA) with the Services. The BLM signed an ACA with the Services on March 3, 2004. Components of the ACA are: (1) A list or description of the staff positions within the agency that will have authority to make NLAA determinations; (2) a program for developing and maintaining the skills necessary within the agency to make NLAA determinations, including a jointly developed training program based on the needs of the action agencies; (3) provisions for incorporating new information and newly listed species or designated critical habitat in the agency's effects analysis on proposed actions; (4) provisions for the agency to maintain a list of NFP projects that receive NLAA determinations under the agreement; and (5) a mutually agreed upon program for monitoring and periodic program evaluations.

The ACA permits any BLM biologist, botanist or ecologist, who has completed the required training, to conduct Section 7 effects analyses and make determinations of effect for proposed actions that are NFP projects under the counterpart regulations. However, journey level biologists, botanists or ecologists are responsible for ensuring and documenting adequacy of the BE/BA with existing policy, and line officers are responsible for documenting compliance with the ESA and counterpart regulations. All biologists, ecologists, botanists and line officers (end users) who will use the counterpart regulations are required to be certified as having successfully completed the mandatory training. Training will be provided through a web-based interactive session, available through the internet from your computer work station around the beginning of May 2004.

A one-day training/orientation session for BLM State program leaders who have responsibility for Section 7 consultation was held March 24, 2004, in Phoenix, Arizona. This session was attended by BLM, FS, FWS and the National Marine Fisheries Service State/Regional personnel. The purpose of the session was to explain the roles and responsibilities of the agencies, ensure State/Regional personnel providing oversight understand the counterpart regulations and ACA, and train/certify end users attending the session. End users from Arizona were encouraged to attend to test the web-based training module in development.

The Alternative Consultation Agreement can be viewed at the following sites: <http://www.blm.gov/nhp/text/index.htm> or <http://www.blm.gov/nhp/index.html>, and the counterpart regulations can be viewed at <http://endangered.fws.gov/consultations/forestplan.html>.

Although this may represent new work for the BLM, it is anticipated that through proper implementation of the ACA, increased efficiencies in the consultation process will be realized. It is critical that BLM meet the conditions of the ACA and maintain a complete project record for NFP projects implemented under the counterpart regulations. Complete legal defensibility of our analysis and documentation is now a BLM responsibility.

If you have any questions regarding the counterpart regulations or ACA, please contact Peggy Olwell, Senior T&E Specialist, Fish, Wildlife and Botany Group (WO-230) at (202) 452-7764.

Signed by:
Thomas H. Dyer
Acting Assistant Director
Renewable Resources and Planning

Authenticated by:
Barbara J. Brown
Policy & Records Group, WO-560

1 Attachment
1 – Alternative Consultation Agreement (**See Websites**)