

## **Use of the ESA Section 7 Counterpart Regulations for Projects that Support the National Fire Plan**

Program Review: Years 2-4 (March 1, 2005-February 28, 2008)

U.S. Fish and Wildlife Service

### **The Counterpart Regulations for National Fire Plan Projects**

Section 7(a)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.; hereafter ESA) requires federal agencies to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of endangered or threatened species or destroy or adversely modify designated critical habitat in consultation with, and with the assistance of the Secretaries of Commerce and Interior. The principles, practices, and protocols for section 7 consultations are identified in the ESA, and regulations promulgated in 1986 for implementing section 7 (50 CFR. Part 402), further expound the procedural and substantive requirements for consultation.

On December 8, 2003, the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS; hereafter jointly referred to as the Services) in cooperation with the Forest Service (FS), Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), and National Park Service (NPS; hereafter referred to collectively as the Action Agencies), issued joint counterpart regulations (CR) for section 7 consultation (Federal Register, pages 68254-68265). Codified in 50 CFR part 402 subpart C, the CR provide an optional alternative to the standard section 7 consultation, and were developed specifically for agency projects that authorize, fund, or carry out actions that support the National Fire Plan. The National Fire Plan, part of the Healthy Forests Initiative of 2002, is an interagency strategy for reducing the risk of catastrophic wildland fires and restoring fire-adapted ecosystems. The intent of the CR is to eliminate the need to obtain written concurrence from the Services for those National Fire Plan actions that the Action Agency determines are “not likely to adversely affect (NLAA)” any listed species or designated critical habitat, thus streamlining ESA compliance for the Action Agencies and reducing workload constraints for the Services.

According to the CR for National Fire Plan activities, any of the participating Action Agencies may make NLAA determinations for fire plan projects after entering into an Alternative Consultation Agreement (ACA) with the Services, and upon implementing the provisions of the ACA. Additional details on the procedures and roles of the agencies are outlined in the ACA, including specific requirements for reporting, training and execution of self-certification, incorporating new information in Agency decisions, and conducting periodic program monitoring of the use of the counterpart regulations. Presently, four of the five Action Agencies that participated in the development of counterpart regulations for National Fire Plan projects have signed ACAs. The Services signed joint ACAs with the FS and BLM in March 2004, and BIA in July 2004, and the NPS in July 2005. The FWS has not notified NMFS of its intent to enter into an ACA for

actions in the support of the National Fire Plan on National Wildlife Refuges or National Fish Hatcheries. This review was limited to those projects completed under the CR by the FS, NPS and BLM. The BIA has not reported having trained any staff or conducting projects under the counterpart regulations.

## **Principles, Practices and Protocols of Section 7 Determinations**

The ESA and its implementing regulations form the foundation for evaluating whether agency actions are not likely to jeopardize the continued existence of endangered or threatened species or destroy or adversely modify designated critical habitat. Additional guidance and interagency policy for meeting the procedural and substantive requirements of section 7 are established within a variety of documents, including the ACAs established under the counterpart regulations, the Consultation Handbook (FWS and NMFS 1998), the National Fire Plan web-based CR training, Interagency Policy on Information Standards of the ESA (59 FR 166, 34271-34274; July 1, 1994), Information Quality Act (Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 [Public Law 106-554; H.R. 5658]), numerous judicial decisions resulting from litigation, and the Administrative Procedure Act (5 U.S.C. 706; hereafter APA).

Section 7(a)(2) of the ESA requires federal agencies, in consultation with and with the assistance of the Services, to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of endangered or threatened species or destroy or adversely modify designated critical habitat. As part of the consultation process, Federal agencies determine if their actions are likely to adversely affect listed species or critical habitat. The consultation regulations at 50 CFR 402.13 describe how Federal action agencies request concurrence from the Services on their determinations of “not likely to adversely affect.” The CR for Implementing the National Fire Plan at 50 CFR part 402 subpart C contain their own unique procedural requirements, which include the requirements for entering into an ACA to make determinations on fire plan projects without the Services’ concurrence.

Under the CR the Action Agency has the final responsibility for determining whether its actions are not likely to adversely affect threatened and endangered species or their designated critical habitat, and ensuring that the conclusions reached in reviewing the potential effects of fire plan projects represent reasoned reflections of the evidence available. In order to demonstrate that an action is not likely to adversely affect listed species the reasons and evidence provided must include the best scientific and commercial data available, a clear description of the federal action, a description of the action’s direct and indirect environmental effects (including effects of interrelated and interdependent actions), a description of the specific area that may be affected by the action (the Action Area), a description of the listed species and designated critical habitat. With that information, an assessment of the overlap between potential effects and the listed species and designated critical habitat (listed resources) is made such that exposure is unlikely or that responses to exposure are likely to be insignificant, discountable, or wholly beneficial. Management strategies may be incorporated into the federal action to

minimize or eliminate the adverse effects to listed species and their designated critical habitat by either reducing or eliminating exposure.

The conclusion that a project is not likely to adversely affect a listed species is appropriate when effects on listed species are expected to be discountable, or insignificant, or completely beneficial. Completely beneficial effects are contemporaneous positive effects without any adverse effects to the species. Insignificant effects relate to the scope of the impact and should never reach the scale where take occurs. Discountable effects are those extremely unlikely to occur. Based on best judgment, a person would not 1) be able to meaningfully measure, detect, or evaluate insignificant effects; or 2) expect discountable effects to occur. Where uncertainty exists relative to the nature or likelihood of the effects, the benefit of the doubt should be given to the species in order to minimize the risk of significant consequences due to erroneous conclusions.

Another important statute that governs consultation decisions is the Administrative Procedures Act (APA). In general, documents supporting section 7 consultations are generally evaluated against the arbitrary and capricious standard of the APA. Specifically, the conclusion of a consultation would be arbitrary and capricious if it:

- Relied on factors that Congress did not intend to be considered;
- Failed to consider an important aspect of a problem;
- Offered an explanation for the conclusion that runs counter to the evidence; or
- Failed to articulate a rational connection between the facts that were found and the conclusions reached.

Under the authority of the APA, courts can hold unlawful and set aside any findings or conclusions that are found to be arbitrary and capricious. Therefore, the conclusions reached in reviewing the potential effects of fire plan projects must represent reasoned reflections of the evidence available.

## **Purpose of This Report**

This report reviews the NPS, BLM and FS use of the ESA CR for National Fire Plan activities during the second through fourth years (March 1, 2005-February 28, 2008) of implementation as required by the ACA. This review was conducted by the FWS evaluation of the decision documents (biological assessments or evaluations; BAs/BEs) produced by the action agencies to support their determinations made under the counterpart regulations. The evaluation of these documents allowed the FWS to determine whether the documentation of the decisions the action agencies made under the CR was consistent with the best scientific and commercial data, and are in compliance with the ESA and its implementing regulations, as well as noting the adequacy of the documents themselves in describing and justifying the agencies' determinations.

## **Use of the Counterpart Regulations**

Information for this review of the alternative consultation program was obtained through correspondence with the NPS, BLM and FS and their field units. Each ACA established reporting and monitoring requirements for notifying NMFS' Director of Protected Resources and the appropriate FWS Field Office, in writing, when a subunit of the NPS, BLM or FS has fulfilled the training requirements and intends to implement the counterpart regulations. Information was also provided by the NPS, BLM and FS in support of the annual reporting requirements established within their ACAs.

### **Bureau of Land Management**

The BLM, FWS, and NMFS entered into an ACA in March 2004. Training and subsequent use of the alternative consultation process began in summer of that year. Between March 24, 2004, and February 28, 2005, 417 BLM personnel both completed the web-based training, and passed the associated examination to become certified to use the alternative consultation process (Table 1).

**Table 1. BLM personnel certified from March 1, 2004 – February 28, 2008**

| <b>Year</b>        | <b>Total Number of Certified Personnel</b> |
|--------------------|--|
| 2004-2005          | 423  |
| 2005-2006          | 15   |
| 2006-2007          | 0  |
| 2007-February 2008 | 2  |
| <b>Total</b>       | <b>440</b>                                 |

Consistent with section E.8. of the signed ACA each subunit that has fulfilled the training requirements notifies NMFS' Director of Protected Resources and/or the appropriate FWS Field Office (FO) in writing before implementing the counterpart regulations. In addition, the BLM annually provides NMFS and FWS with a list of the personnel who have completed the training and passed the certification exam.

### **Forest Service**

The FS completed an ACA with the NMFS and FWS in March 2004, and began training and using the alternative consultation process in summer 2004. Between March 24, 2004, and February 28, 2005, 716 FS personnel both completed the web-based training and passed the associated examination to become certified to use the alternative consultation process (Table 2).

**Table 2. Forest Service Personnel Certified March 1, 2004-February 28, 2008.**

| <b>Year</b>          | <b>Total Number of Certified Personnel</b> |
|----------------------|--|
| <b>2004-2005</b>     | <b>716</b>                                 |
| <b>2005-2006</b>     | <b>113</b>                                 |
| <b>2006-2007</b>     | <b>70</b>                                  |
| <b>2007-Feb 2008</b> | <b>25</b>                                  |
| <b>Total</b>         | <b>924</b>                                 |

Consistent with section E.8. of the signed ACA each subunit that has fulfilled the training requirements notifies NMFS' Director of Protected Resources and/or the appropriate FWS field office in writing before implementing the counterpart regulations. In addition, the Forest Service annually provides NMFS and FWS with a list of the personnel who have completed the training and passed the certification exam.

### **National Park Service**

The NPS, FWS and NMFS entered into an ACA on November 8, 2005. Between November 8, 2005, and February 28, 2005, 18 NPS personnel became certified to use the alternative consultation process (Table 3).

**Table 3. National Park Service Personnel Certified March 1, 2004-February 28, 2008.**

| <b>Year</b>          | <b>Total Number of Certified Personnel</b> |
|----------------------|--|
| <b>2004-2005</b>     | <b>18</b>                                  |
| <b>2005-2006</b>     | <b>69</b>                                  |
| <b>2006-2007</b>     | <b>32</b>                                  |
| <b>2007-Feb 2008</b> | <b>40</b>                                  |
| <b>Total</b>         | <b>159</b>                                 |

Consistent with section E.8. of the signed ACA each subunit that has fulfilled the training requirements notifies NMFS' Director of Protected Resources and/or the appropriate FWS FO in writing before implementing the counterpart regulations. In addition, the National Park Service is required to annually provide NMFS and FWS with a list of the personnel who have completed the training and passed the certification exam.

## Number of Projects Conducted

### Bureau of Land Management

Between March 1, 2005-February 28, 2008, the BLM conducted 13 projects using the counterpart regulations in this review period. We note that the BLM also erroneously applied the counterpart regulations to seven additional projects involving emergency wildfire response. These emergency actions are not eligible for consultation under the ACA, but rather should have undergone emergency section 7 consultation procedures. Though the BLM supplied the BA/BEs for these seven emergency actions, these projects are not included in this evaluation. Additionally, the BLM also submitted a BA/BE for one other project for which they made a No Effect determination. The CR only address Not Likely to Adversely Affect (NLAA) determinations and therefore, this project is also excluded from this evaluation.

We also note that the BLM provided a BA/BE for the Lacks Creek project in California which only addressed aquatic species under the jurisdiction of NMFS. No BA/BE for terrestrial species was completed. Notwithstanding the lack of a biological assessment, it appears that BLM made a No Effect determination for terrestrial species regarding this project.

**Table 4: Number of BLM Counterpart Regulations Projects by State March 1, 2005-February 28, 2008.**

| State      | Number of Projects |
|------------|--------------------|
| Colorado   | 3                  |
| Idaho      | 1                  |
| Montana    | 1                  |
| New Mexico | 1                  |
| Oregon     | 1                  |
| Utah       | 6                  |

**Table 5: T&E Species for which a NLAA Determination was made for BLM Counterpart Regulations Projects, 2005-2008.**

| State    | Species  |
|----------|--|
| Colorado | Bald eagle ( <i>Haliaeetus leucocephalus</i> ) |

|                   |   |
|-------------------|---|
|                   | <p>Canada lynx (<i>Lynx canadensis</i>)</p> <p>Bonytail (<i>Gilia elegans</i>)</p> <p>Colorado pikeminnow (<i>Ptychocheilus lucius</i>)</p> <p>Humpback chub (<i>Gilia cypha</i>)</p> <p>Razorback sucker (<i>Xyrauchen texanus</i>)</p> <p>Penland beardtongue (<i>Penstemon penlandii</i>)</p> <p>Osterhout milkvetch (<i>Astragalus osterhoutii</i>)</p> |
| <b>Idaho</b>      | <p>Columbia River Basin bull trout (<i>Salvelinus confluentus</i>)</p> <p>Canada lynx (<i>Lynx canadensis</i>)</p> <p>Bald eagle (<i>Haliaeetus leucocephalus</i>)</p> <p>Gray wolf (<i>Canis lupus</i>)—10(j) population</p>   |
| <b>Montana</b>    | <p>Gray wolf (<i>Canis lupus</i>)</p> <p>Grizzly bear (<i>Ursus horribilis</i>)</p> <p>Canada lynx (<i>Lynx canadensis</i>)</p> <p>Bald eagle (<i>Haliaeetus leucocephalus</i>)</p> <p>Bull trout (<i>Salvelinus confluentus</i>)</p>   |
| <b>New Mexico</b> | <p>Mexican spotted owl (<i>Strix occidentalis lucida</i>)</p> <p>Todsens's pennyroyal (<i>Hedeoma todsenii</i>)</p>   |
| <b>Oregon</b>     | <p>Northern spotted owl (<i>Strix occidentalis</i>)</p>   |
| <b>Utah</b>       | <p>Bald eagle (<i>Haliaeetus leucocephalus</i>)</p> <p>California condor (<i>Gymnogyps californianus</i>)</p> <p>Desert tortoise (<i>Gopherus agassizii</i>)</p> <p>Mexican spotted owl (<i>Strix occidentalis lucida</i>)</p>  |

## **Forest Service**

Between March 1, 2005-February 28, 2008, the FS conducted a total of 137 projects using the counterpart regulations in this review period. Table 6 shows the total number of CR projects completed by the FS per year.

**Table 6: Number of Forest Service Counterpart Regulations Projects by Year.**

| <b>Year</b>                            | <b>Number of CR Projects</b> |
|--|------------------------------|
| <b>March 1, 2005-February 28, 2006</b> | <b>51</b>                    |
| <b>March 1, 2006-February 28, 2007</b> | <b>60</b>                    |
| <b>March 1, 2007-February 28, 2008</b> | <b>26</b>                    |

## **National Park Service**

During the period from March 1, 2005-February 28, 2008, the NPS reported only one project completed under the CR. This project was a prescribed burn within the Padre Island National Seashore in Corpus Christi, Texas. It is our understanding that this is the only CR project for which the NPS has utilized the CR.

**Table 7. List of Federally Listed Species Analyzed by NPS for CR Project.**

|   |
|---|
| American Alligator ( <i>Alligator mississippiensis</i> )        |
| Kemp's Ridley Sea Turtle ( <i>Lepidochelys kempii</i> )         |
| Loggerhead Sea Turtle ( <i>Caretta caretta</i> )                |
| Green Sea Turtle ( <i>Chelonia mydas</i> )                      |
| Atlantic Hawksbill Sea Turtle ( <i>Eretmochelys imbricata</i> ) |

## **Evaluation Results**

### **Reviews of BA/BEs--Methodolgy**

The evaluation methodology used by the FWS was developed jointly by the FWS, FS and BLM during Year 1 of the CR and was used to evaluate the first year of implementation. This methodology was designed to take advantage of the knowledge and expertise of local FWS biologists who are familiar with the area and species and who specialize in conducting section 7 consultations. The methodology, described below, involved a three-tiered process that was designed to provide a full and concise evaluation and to assure accuracy, consistency and fairness. The BA/BEs used by the NPS, BLM and FS to make the NLAA determinations were collected from the Action Agencies and provided to the FWS Regional Offices (ROs), who then distributed them to the various FWS Field

Offices (FOs). Detailed instructions were provided to reviewers to insure that each evaluation was focused and consistent.

Tier 1: FWS FO section 7 biologists reviewed the BA/BEs using the Evaluation Form that had been developed by all the participating agencies during the development of the ACA and assessed whether the BA/BEs met the criteria listed on the form. If a BA/BE did not meet an individual criterion, the reviewer provided a concise and factual narrative rationale as to the reason(s). Requests by the reviewers for additional information were limited to only that which the Action Agency actually used, e.g.; maps that were referenced in the BA/BE but which had not been included or similar information. If the reviewer identified issues that should have been addressed, but were not considered in the BA/BE, the reviewer marked a “no” on the appropriate portion of Appendix 3 and provided the above-mentioned explanation. Any questions from the FO were directed to the ROs, which also coordinated closely with the FWS WO. After completion, the reviewers then returned the BA/BEs and copies of the completed Evaluation Form, plus the explanation for any criteria not met, if applicable, to the ROs.

Tier 2: Upon receipt of the completed FWS FO evaluation documents, each RO then checked for completeness and consistency throughout its region. If there were any questions regarding the results, the FO reviewers were contacted by the FWS Regional Coordinator to provide clarification. Throughout the process, the ROs coordinated closely with the WO to answer any questions that arose during the review and to determine whether additional materials should be requested from the Action Agencies. For example, some BA/BEs cited maps or other supporting materials upon which they based the NLAA determination, but did not include these materials with the BA/BE. ROs and the WO then determined whether it was appropriate to obtain these additional materials.

Tier 3: The FWS WO worked with the ROs to ensure that all regions were conducting the review consistently and, when necessary, contacted the BLM and FS to obtain information that had been omitted from the BA/BE package. The WO then collected the results for each project, and confirmed that all reviews had been conducted consistently. In some instances, additional information was requested from the ROs and FOs in order to clarify the rationales that had been provided for the results. The results were then tabulated on a project by project basis, and overall for each of the criteria.

## Results

### Forest Service

For the current evaluation, we evaluated a sample of projects completed during years 2-3 and all of the projects from year 4, making a total of 46 projects evaluated out of the 137 projects completed from 2005-2008. The selection of the evaluation sample was not fully random. In selecting which projects from years 2 and 3 to review, we considered: (1) if a given Forest or Grassland had used the CR during the first year and received a poor evaluation; and (2) if a given Forest or Grassland had not previously used the CR and therefore, had not yet been evaluated. In order to ensure that the number of projects evaluated be similar to the number evaluated in the First Year Report, we randomly selected the projects to be evaluated from Years 2-3 that met the above criteria. Since the First year report was issued early in 2008, we believed that it was likely that the FS would have an opportunity to provide guidance and implement any changes during Year 4. Consequently, we decided to evaluate all of the Year 4 projects to determine whether there was an overall improvement in FS's implementation of CR.

#### **1. Identifies proposed action clearly (includes a description of the various components of the action)**

Of the 46 projects evaluated, the FWS' evaluation found that nine did not fully identify the proposed action. In some of these cases, the cause of not meeting this criterion was the lack of detailed project description in the BA/BE, and some components of the projects were identified in ancillary documents, but not addressed in the BA/BE, such as weed treatments, roads, or the timing and duration of the project. Without sufficient detail to identify all potential sources of impacts to listed species or critical habitat, any corresponding potential implications cannot be fully understood.

#### **2. Identifies spatial and temporal patterns of the action's direct and indirect environmental effects, including direct and indirect effects of interrelated and interdependent actions**

FWS reviewers found that ten BA/BEs did not meet this criterion. Of these ten projects, several did not discuss temporal effects or indirect effects. None of these ten were found to have addressed interrelated or interdependent actions. In some cases, the BA/BE appeared to be taken directly from a NEPA document and did not clearly identify a single proposed action.

#### **3. Identifies Action Area clearly (also based on information in 2)**

FWS reviewers found that nine of the FS's BA/BEs did not meet this criterion. In some cases, the BA/BE identified the project footprint, but did not address the anticipated full reach of indirect effects, such as travel distance of smoke/smoke inversion or the distance of temporarily reduced stream quality. In other cases, the project area was simply identified as a "resource area," with no maps or narrative analysis included.

**4. Identifies all threatened and endangered species and any designated critical habitat that may be exposed to the proposed action (includes a description of spatial, temporal, biological characteristics and constituent habitat elements appropriate to the project assessment)**

FWS reviewers found that seven projects did not meet this criterion. Some did not identify all the listed species that may be affected by the project. For example, some identified only terrestrial species and omitted reference to potentially affected aquatic species (e.g., bull trout). Additionally, some species were identified within the project area, but were not fully analyzed with respect to potential impacts. For example, one BA/BE stated that effects to denning wolves were expected to be negligible because there were no “known” den or rendezvous sites in the project area, but did not address the probability that such sites would be known. In another example, the BA/BE addressed terrestrial wildlife species, but made no mention of plants or aquatic species, even though these taxonomic groups may have been present.

**5. Compares the distribution of potential effects (identified in 2) with the threatened and endangered species and designated critical habitat (identified in 4) and establishes, using the best scientific and commercial data available, that (a) exposure is improbable or (b) if exposure is likely, responses are insignificant, discountable, or wholly beneficial**

FWS reviewers found that eight projects did not meet this criterion. In some cases, temporally sensitive periods (e.g., breeding season, etc) were identified, but not compared to the timing of the project. In one case, the BA/BE stated that the proposed project would be implemented between April and September, but then stated that the species would not be impacted because the project would be implemented during the winter. This discrepancy left the FWS reviewer unable to determine whether the species may in fact have been impacted.

**6. Determination is based on best available scientific and commercial information**

FWS reviewers found that five projects did not meet this criterion. The reviewers found that most of these had not cited recent existing studies to update their information regarding species locations or condition.

**BLM**

Only 13 NLAA determinations that addressed FWS’ species and were eligible for use of the CR were completed by BLM under the ACA between March 1, 2005-February 28, 2008. Because of the small number of BA/BEs, the FWS evaluated all of these BA/BEs. We note that the BLM also submitted eight additional BA/BEs that were not eligible for use of CR; one project in which a No Effect determination was made and seven projects which were identified as part of a wildfire response. These seven wildfire response projects were ineligible for use of the CR and should have used the emergency

consultation process outlined in Chapter 8 of the Consultation Handbook for ESA compliance. A No Effect determination is made pursuant to the Action Agency's discretion and not under the CR. These eight BA/BEs are not addressed further in this report.

**1. Identifies proposed action clearly (includes a description of the various components of the action)**

FWS reviewers found that six BA/BEs did not meet this criterion. In some cases specific components of the project were not identified, such as the amount of acreage to be treated, timing of treatments, or description of reseeding methodology. In other cases, attachments that were cited in the BA/BE and may have provided important information were not included in the BA/BE. Some BA/BEs had incomplete documentation; e.g., maps referenced in the BA but not provided and information incorporated by reference from an Environmental Assessment, but not included with the BA.

**2. Identifies spatial and temporal patterns of the action's direct and indirect environmental effects, including direct and indirect effects of interrelated and interdependent actions**

FWS reviewers found that six BA/BEs did not meet this criterion. Most of these BA/BEs were found not to have addressed the temporal or indirect effects of the proposed actions. Some BA/BEs did not provide sufficient detail in the effects analysis to understand how the NLAA determination was reached.

**3. Identifies Action Area clearly (also based on information in 2)**

FWS reviewers found that nine of BLM's BA/BEs did not meet this criterion. In one case, a definition of the term "action area" was provided, but no description of the proposed action area was included in the BA/BE. In another case, the description was cursory and the attached maps were illegible. In other cases, the reviewers found that the BA/BE did not clearly describe the project footprint, nor were additional potential indirect effects identified.

**4. Identifies all threatened and endangered species and any designated critical habitat that may be exposed to the proposed action (includes a description of spatial, temporal, biological characteristics and constituent habitat elements appropriate to the project assessment)**

FWS reviewers found that six BA/BEs did not meet this criterion. These appeared to the reviewers to be caused primarily by omissions of important information, such as omission of the timing of the proposed action, which would be needed to determine all species that might be impacted (e.g., migratory or hibernating species).

**5. Compares the distribution of potential effects (identified in 2) with the threatened and endangered species and designated critical habitat (identified in 4) and**

**establishes, using the best scientific and commercial data available, that (a) exposure is improbably or (b) if exposure is likely, responses are insignificant, discountable, or wholly beneficial**

FWS reviewers found that seven BA/BEs did not meet this criterion. In some cases, the reviewers found that this stemmed from inadequacies in meeting previous criteria, which resulted in a “cascade” effect; e.g.; the proposed action and action areas were not clearly defined, making it impossible to adequately assess likelihood and distribution of potential effects

**6. Determination is based on best available scientific and commercial information**

FWS reviewers found that seven BA/BEs did not meet this criterion. Primarily, the reviewers found these did not show that relevant published literature and current survey data were consulted even though these were readily available.

**National Park Service**

The NPS only used the CR on a single project during the review period and this project successfully met all of the criteria specified in Appendix 3 of the ACA. We note that during the FWS review, criterion #6, “Determination is based on best available scientific and commercial information,” was initially marked as not met. However, this was in error as verified by the Regional reviewer and hereby noted in this report.

**Table 8. Summary of FWS Counterpart Regulations (CR) Review Results**

|  | <b>Forest Service</b> | <b>BLM</b> | <b>NPS</b> |
|--|-----------------------|------------|------------|
|  |                       |            | <b>1</b>   |
| <b>Total number of projects with FWS species evaluated</b>                       | <b>46</b>             | <b>13</b>  |            |
|  |                       |            | <b>1</b>   |
| <b>Total number of projects that met all evaluation criteria</b>                 | <b>24</b>             | <b>4</b>   |            |
|  |                       |            | <b>n/a</b> |
| <b>Total number of projects that did not meet 1 or more evaluation criterion</b> | <b>22</b>             | <b>10</b>  |            |
|  |                       |            | <b>n/a</b> |
| <b>Total number of projects that met none of the criteria</b>                    | <b>1</b>              | <b>5</b>   |            |
|  |                       |            |            |

**Table 9. Number of Projects Reviewed by FWS That Did Not Meet Specific Criteria**

| <b>Criterion from Evaluation Form (Appendix 3 of ACA)</b>          |                       |            |            |
|--|-----------------------|------------|------------|
|  | <b>Forest Service</b> | <b>BLM</b> | <b>NPS</b> |
| 1-Identified proposed action                                       | <b>9</b>              | <b>6</b>   | <b>n/a</b> |
| 2-Identified Direct /Indirect/ Interrelated/Interdependent actions | <b>10</b>             | <b>6</b>   | <b>n/a</b> |
| 3-Identified Action Area   | <b>9</b>              | <b>9</b>   | <b>n/a</b> |
| 4-Identified all T&E species and/or Critical Habitat               | <b>7</b>              | <b>6</b>   | <b>n/a</b> |
| 5-Determined likelihood of exposure to effects                     | <b>8</b>              | <b>7</b>   | <b>n/a</b> |
| 6-Determination was based on best available data                   | <b>5</b>              | <b>7</b>   | <b>n/a</b> |