necessary or appropriate to minimize
the impacts, i.e., amount or extent, of
incidental take.

Recovery means improvement in the
status of listed species to the point at
which listing is no longer appropriate
under the criteria set out in section
4(a)(1) of the Act.

Service means the U.S. Fish and Wild-
life Service or the National Marine
Fisheries Service, as appropriate.

§ 402.03 Applicability.

Section 7 and the requirements of
this part apply to all actions in which
there is discretionary Federal involve-
ment or control.

§ 402.04 Counterpart regulations.

The consultation procedures set forth
in this part may be superseded for a
particular Federal agency by joint
counterpart regulations among that
agency, the Fish and Wildlife Service,
and the National Marine Fisheries
Service. Such counterpart regulations
shall be published in the Federal Reg-
ister in proposed form and shall be
subject to public comment for at least
60 days before final rules are published.

§ 402.05 Emergencies.

(a) Where emergency circumstances
mandate the need to consult in an ex-
pedited manner, consultation may be
conducted informally through alter-
native procedures that the Director de-
termines to be consistent with the re-
quirements of sections 7(a)-(d) of the
Act. This provision applies to situa-
tions involving acts of God, disasters,
casualties, national defense or security
emergencies, etc.

(b) Formal consultation shall be ini-
tiated as soon as practicable after the
emergency is under control. The Fed-
eral agency shall submit information
on the nature of the emergency ac-
tion(s), the justification for the expe-
dited consultation, and the impacts to
dangered or threatened species and
their habitats. The Service will evalu-
ate such information and issue a bio-
logical opinion including the informa-
tion and recommendations given dur-
ing the emergency consultation.

§ 402.06 Coordination with other envi-
ronmental reviews.

(a) Consultation, conference, and bio-
logical assessment procedures under
section 7 may be consolidated with
interagency cooperation procedures re-
quired by other statutes, such as the
National Environmental Policy Act
(NEPA) (42 U.S.C. 4321 et seq., imple-
mented at 40 CFR Parts 1500-1508) or
the Fish and Wildlife Coordination Act
(FWCA) (16 U.S.C. 661 et seq.). Satis-
fying the requirements of these other
statutes, however, does not in itself re-
lieve a Federal agency of its obliga-
tions to comply with the procedures
set forth in this part or the substantive
requirements of section 7. The Service
will attempt to provide a coordinated
review and analysis of all environ-
mental requirements.

(b) Where the consultation or con-
ference has been consolidated with the
interagency cooperation procedures re-
quired by other statutes such as NEPA
or FWCA, the results should be in-
cluded in the documents required by
those statutes.

§ 402.07 Designation of lead agency.

When a particular action involves
more than one Federal agency, the con-
sultation and conference responsibil-
ities may be fulfilled through a lead
agency. Factors relevant in deter-
mining an appropriate lead agency in-
clude the time sequence in which the
agencies would become involved, the
magnitude of their respective involve-
ment, and their relative expertise with
respect to the environmental effects of
the action. The Director shall be noti-
fied of the designation in writing by
the lead agency.

§ 402.08 Designation of non-Federal
representative.

A Federal agency may designate a
non-Federal representative to conduct
informal consultation or prepare a bio-
logical assessment by giving written
notice to the Director of such designa-
tion. If a permit or license applicant is
involved and is not the designated non-
Federal representative, then the appli-
cant and Federal agency must agree on
the choice of the designated non-Fed-
eral representative. If a biological as-
essment is prepared by the designated