

specifying the DARRP indirect rates for FY 2002 was published on October 6, 2003 (68 FR 57672), a fourth notice for the FY 2003 indirect cost rates appeared on May 20, 2005 (70 FR 29280), and a fifth notice for the FY 2004 indirect cost rates was published on March 16, 2006 (71 FR 13356). The notice for the FY 2005 indirect cost rates was published on February 9, 2007 (72 FR 6221). The notice for the FY 2006 rates was published on June 3, 2008 (73 FR 31679). Finally, the notice for the FY 2007 and FY 2008 rates was published on November 16, 2009 (74 FR 58948). Cotton's reports on these indirect rates can also be found on the DARRP Web site at <http://www.darrp.noaa.gov>.

Cotton reaffirmed that the Direct Labor Cost Base is the most appropriate indirect allocation method for the development of the FY 2009 and FY 2010 indirect cost rates.

#### The DARRP's Indirect Cost Rates and Policies

The DARRP will apply the indirect cost rates for FY 2009 and FY 2010 as recommended by Cotton for each of the DARRP component organizations as provided in the following table:

DARRP Component organization	FY2007 Indirect rate (percent)	FY2008 Indirect rate (percent)
Office of Response and Restoration (ORR) .....	197.44	125.88
Restoration Center (RC) .....	142.07	90.42
General Counsel for Natural Resources (GCNR)	83.93	49.49

These rates are based on the Direct Labor Cost Base allocation methodology.

The FY 2009 rates will be applied to all damage assessment and restoration case costs incurred between October 1, 2008 and September 30, 2009. The FY 2010 rates will be applied to all damage assessment and restoration case costs incurred between October 1, 2009 and September 30, 2010. DARRP will use the FY 2010 indirect cost rates for future fiscal years, beginning with FY 2011, until subsequent year-specific rates can be developed.

For cases that have settled and for cost claims paid prior to the effective date of the fiscal year in question, the DARRP will not re-open any resolved matters for the purpose of applying the revised rates in this policy for these fiscal years. For cases not settled and cost claims not paid prior to the effective date of the fiscal year in question, costs will be recalculated

using the revised rates in this policy for these fiscal years. Where a responsible party has agreed to pay costs using previous year's indirect rates, but has not yet made the payment because the settlement documents are not finalized, the costs will not be recalculated.

The DARRP indirect cost rate policies and procedures published in the Federal Register on December 7, 2000 (65 FR 76611), on December 2, 2002 (67 FR 71537), October 6, 2003 (68 FR 57672), May 20, 2005 (70 FR 29280), March 16, 2006 (71 FR 13356), February 9, 2007 (72 FR 6221), June 3, 2008 (73 FR 31679), and November 16, 2009 (74 FR 58948) remain in effect except as updated by this notice.

Dated: September 15, 2011.

**David Westerholm,**

*Director, Office of Response and Restoration.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XA725**

#### Endangered and Threatened Species; Counterpart Regulations

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; Fish and Wildlife Service (USFWS), Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Forest Service and Bureau of Land Management (together, action agencies) in coordination with the USFWS and NMFS, have agreed to revoke the March 4, 2004, National Fire Plan Counterpart Regulation Alternative Consultation Agreements (ACAs).

**DATES:** This is effective on October 1, 2011.

**ADDRESSES:** The final decision of revocation is available on the internet at <http://www.nmfs.noaa.gov/pr/laws/esa/policies.htm#consultation> and <http://www.fws.gov/endangered/esa-library/index.html>. Action Agency documents, as well as supporting documentation used in the preparation of this decision, will be available for public inspection, by appointment, during normal business hours at: NMFS Office of Protected Resources, 1315 East-West Highway, Room 13535, Silver Spring, MD 20910 or USFWS, 4401 N. Fairfax Drive, Arlington, VA 22203.

#### FOR FURTHER INFORMATION CONTACT:

Angela Somma, NMFS, at 301-427-8474 or by fax at 301-713-0376; or Rick

Sayers, USFWS at 703-358-2171 or by fax at 703-358-1735.

**SUPPLEMENTARY INFORMATION:** 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, in consultation with, and with the assistance of, the Secretaries of Commerce and Interior, 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. 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. The counterpart regulations provide an optional alternative to the standard section 7 consultation process, and were developed specifically for agency projects that authorize, fund, or carry out actions that support the National Fire Plan. Upon entering into an ACA with the Services, action agencies may make "not likely to adversely affect" determinations for National Fire Plan projects without consulting with the Services. The March 4, 2004, ACAs included specific requirements for reporting and conducting periodic program monitoring of the use of the counterpart regulations.

NMFS and USFWS reviewed the projects carried out during years two through four by the action agencies. Based on results of the review of these projects, the relatively limited use of the counterpart regulations since their inception, the action agencies' cursory assessment of the year five through seven projects, and the action agencies' request to revoke the ACAs; NMFS and USFWS agree to terminate the ACAs with the action agencies.

Dated: September 20, 2011.

**Angela Somma,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

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