

§ 402.47

written statement or opinion from the Service unless the Service, EPA and any applicant agree to an extended deadline consistent with section 7(b)(1) of the Act.

(3) The Service will issue a final written statement or final biological opinion within 45 days after EPA receives the draft statement or opinion from the Service unless the deadline is extended under section 7(b)(1) of the Act.

(d) *Opinion of the Secretary.* The written statement or opinion by the Service under paragraphs (c)(1) or (c)(3) of this section shall constitute the opinion of the Secretary and the incidental take statement, reasonable and prudent measures, and terms and conditions under section 7(b) of the Act.

(e) *Delegation of Authority for Service decisions.* Any written statement modifying an effects determination or any biological opinion issued under this section shall be signed by the Service Director and such authority may not be delegated below the level of Assistant Director for Endangered Species (FWS) or Director of Office of Protected Resources (NOAA Fisheries).

§ 402.47 Special consultation procedures for complex FIFRA actions.

(a) *Successive effects determinations.* If EPA determines after conferring with the Service that consultation on a FIFRA action will be unusually complex due to factors such as the geographic area or number of species that may be affected by the action, EPA may address the effects of the action through successive effects determinations under this subpart addressing groupings or categories of species or habitats as established by EPA. EPA may initiate consultation based upon each such effects determination using the procedure in § 402.46(a), and the provisions of § 402.46(b) and (c) shall apply to any such consultation. When consultation is conducted under this section, the written statement or opinion provided by the Service under § 402.46(c) constitutes a partial biological opinion as to the species or habitats that are the subject of the consultation. While not constituting completion of consultation under section 7(a)(2), EPA retains authority to use such a partial biological opinion along with other

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available information in making a finding under section 7(d) of the Act.

(b) *Opinion of the Secretary.* After conclusion of all consultation on the FIFRA action, the partial biological opinions issued under paragraph (a) of this section shall then collectively constitute the opinion of the Secretary and the incidental take statement, reasonable and prudent measures, and terms and conditions under section 7(b) of the Act except to the extent a partial biological opinion is modified by the Service in accordance with the procedures in § 402.46(c). The Service shall so advise EPA in writing upon issuance of the last partial biological opinion for the consultation.

§ 402.48 Conference on proposed species or proposed critical habitat.

EPA may employ the procedures described in § 402.10 to confer on any species proposed for listing or any habitat proposed for designation as critical habitat. For the purposes of § 402.10(d), the procedures in § 402.46 are a permissible form of formal consultation.

PART 403—TRANSFER OF MARINE MAMMAL MANAGEMENT AUTHORITY TO STATES

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AUTHORITY: 16 U.S.C. 1361 *et seq.*, as amended by Pub. L. 97–58.

SOURCE: 48 FR 22456, May 18, 1983, unless otherwise noted.

§ 403.01 Purpose and scope of regulations.

The regulations contained in this part implement section 109 of the Act which, upon a finding by the Secretary