

MEMO

Date: October 2, 1998
To: Marti Kie
From: Tiki Baron
Re: Projects/Actions "Ready" for Consultation or Permitting

Section 7 Consultation

The Service can consult with another Federal agency under Section 7 of the ESA on an action as soon as there is adequate information to determine all direct and indirect effects of the action on listed species and designated critical habitat.

The extent of the information required will vary from project to project, but may typically include:

- description of action
- description of the area that may be affected by the action (e.g., location, size, scale)
- timing or duration of project/action
- description of any listed species (or in CALFED's case, any species addressed in the CS) or designated critical habitat that may be affected by the action
- description of the specific activities that may affect or the manner in which species or habitats may be affected by the action

Findings Required for Section 7:

The Service must find that any take associated with the an agency's action must:

- (1) not be likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat;
- (2) result from an otherwise lawful activity, and
- (3) be incidental to the purpose of the action.

Implications for CALFED:

For CALFED, many of the indirect effects of specific actions as

well as the more general, "programmatic" effects of specific actions will have been analyzed in the Conservation Strategy and Programmatic Biological Opinion. Thus, when a specific project is ready to move forward, the Service/NMFS will only need to analyze those effects that have *not already* been covered by the programmatic consultation; this could be done in a subsequent or tiered consultation or "appended" to the programmatic consultation (see below).

There may be types of actions -- generally actions that will have relatively minor effects and occur repeatedly, e.g., installation of fish screens, levee maintenance, certain habitat restoration actions, etc. -- for which the programmatic consultation will specify the parameters under which a specific project/action can be appended to the programmatic consultation. In those cases, if a specific action falls within the parameters specified, consultation can be expedited by the action agency submitting a project description to the Service and the Service confirming in writing that the project can be appended to the programmatic consultation.

Section 10(a)(1)(B):

As required by the ESA and Federal regulation (50 CFR Part 17.22), an applicant for an incidental take permit must submit a Conservation Plan that specifies:

- a complete description of the activity sought to be authorized;
- the common and scientific names of the species sought to be covered by the permit, as well as the number, age, and sex of such species, if known;
- the impact which will likely result from the incidental take authorized by the permit;
- what steps the applicant will take to monitor, minimize, and mitigate such impacts; the funding that will be available to implement such steps; and, the procedures to be used to deal with unforeseen circumstances;
- what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and
- such other measures that the Secretary may require as being necessary or appropriate for the purposes of the plan (e.g., an Implementing Agreement).

Section 10(a)(1)(B) Permit Issuance Criteria:

The Service must find that:

- the taking will be incidental;
- the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
- the applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided;
- the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;
- other measures, as required by the Secretary, will be met; and
- other assurances, as required by the Secretary, that the plan will be implemented have been received.

Implications for CALFED:

For CALFED, the Conservation Strategy will provide much of the information required for a Section 10(a)(1)(B) permit. Thus, an applicant would only need to provide the Service or NMFS with the information *not* provided in the CS.