

Comments on Chapter 11 - ESA Compliance

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General comments:

1) As an overall editorial comment this chapter should be shortened considerably with some serious editing. There is an awful lot of redundancy and circular presentation of the approach such that I had to ask myself several times what are they actually trying to accomplish here. The Introduction (Overview) for example could be a lot more succinct and to the point, and explain more clearly (and early) what the Conservation Strategy is - this first part of the Chapter continually says the Conservation Strategy will do this, and will do that, etc, etc - but its not until much later in the Chapter that there is some explanation of what the Conservation Strategy. It would help a lot if very early in this Chapter there is a clear (and short) explanation of exactly what the Conservation Strategy is.

2) After getting to the end of the Chapter and seeing the explanation of the Conservation Strategy (CS) I think it's name is a misnomer. What the CS actually is - is a strategy (under development) to achieve ESA compliance, *part of which* is activities/programs that address the conservation of species and their habitats (the ERPP being a big and obvious part). I think what is being proposed here is similar to what is being implemented by BOR for the CVP - wherein we have developed a Conservation Program (whose sole intent is to do things on the ground for species), and then this Conservation Program is part of our proposed action so that the action in toto is self mitigating - individual actions then have to have their own consultation - but that specific consultation becomes more of a formality as long as we can show that the Conservation Program is addressing the needs of species that are affected. I would suggest that you change the name of what you are doing to what it actually appears to be, i.e., a Compliance Strategy.

3) The explanation of the CS needs to be strengthened and clarified. Even after reading its description and reviewing the two attached figures I still don't really understand what is really going on. The two attached figures in particular add nothing to the discussion - if anything they confuse the explanation as there is no reference to them in the text, there is no description on the figures, and there is no inherent logic to the figures that allow one to decipher what the flow of events is, or what the inter-relationships are.

4) Where and how are interdependent and inter-related effects being addressed? This is sometimes a bigger challenge than addressing the actual effects of a proposed action and this Chapter is essentially silent on this

Specific Comments:

Page 1, first para, last line - This is the first of several places where the emphasis is on take authorization, to the exclusion of other aspects of ESA such as preventing jeopardy. I would think the emphasis ought to be putting together a strategy that is **primarily** beneficial for species

and **secondarily** provides for any incidental take associated with that strategy (and associated actions). This perhaps ought to be a general comment as what my point is - is that the strategy should be presented/developed as a program to help recover species (as the main thrust) rather than one to authorize incidental take.

Page 2, first para, fourth and fifth line - why would the CS outline the criteria for its own implementation? Seems like there ought to be a two step process here wherein step one defines the criteria whereby the CS would be implemented, then step two is the actual implementation of the CS. This goes back to a general comment stating that the term CS is a misnomer as used in this document and its not really clear what the CS actually is.

Page 3, para 2. - in third line the word "adversely" ought to be inserted before "modify". Modify part of second sentence as follows "...control over an action that may affect listed species." There is no need to consult on actions that don't affect listed species.

Page 4, fourth para in section B., Seventh line - add "a Biological Opinion" in front of delivered.

Page 5, Section 2., first sentence - actually, consultation is initiated after FWS or NMFS believe they have sufficient information on which to consult - not upon receipt of a request.

Page 5, second sentence from bottom - delete "no jeopardy" and replace with Biological Opinion"

Page 9, NEPA Requirements - Can a CE can be used for an Incidental Take Statement by FWS or NMFS? In BOR one of the tests for a CE is no adverse effect on listed species - an Incidental Take Statement implies some adverse effect and so there is a question if use of a CE would be appropriate.

irrelevant

Page 18, first paragraph - Adaptive management is a double edged sword in that you are acknowledging that you may have to do more later in terms of mitigation/etc. I'm not clear in the discussion presented that this is made clear and how this relates to providing assurances. You can assure more money to fix unforeseen problems - but what if the problem is not money but you discover some fundamental problem say with export limits - will the adaptive management allow revisiting that - or are there some doors/options that will simply be closed in the future?

Page 19, top line - why would the CS, which appears to be designed to address affects of CALFED activities assume responsibility for what appears to be "Acts of God" (i.e. extreme weather)? This seems a little too encompassing.

Page 19, first para under Section 7 Consultation - again, there is only a requirement to consult if you affect a listed species.

Page 23 fourth para - I don't understand why the CS would be on GIS - what I think you mean is that the actual *conservation activities* undertaken pursuant to the CS would be on GIS.

Page 24, first para under NEPA - again I would check the applicability of CE's to Incidental Take Statements.

Page 27, second para, first sentence - This sentence implies that there will be a comprehensive consultation (or other comprehensive approach) to ESA compliance . Yet in previous pages (page 21 for example) talks about subsequent consultations. This is an inconsistency that can be resolved by a clear explanation of exactly what the CS is.