U.S. Fish and Wildlife Service
Pacific Southwest Region

Renewable Energy Scoping Meeting

March 12, 2009

Sacramento, CA

March 17, 2009

Palm Springs, CA

Mission and Regulatory Mandate of the U.S. Fish and Wildlife Service

- Mission: Working with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people.
- Endangered Species Act: provides a means for conserving the ecosystems upon which endangered and threatened species depend and a program for the conservation of such species.

Key ESA Regulations

Sections 7 and 10

- Section 7: Actions funded, authorized, or carried out by a Federal agency
- Section 10: Nonfederal actions
- Differences: Time, money, project scope, assurances

The “Take” Concept

- Take: to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.
- Must be incidental
- Harm: Habitat modification resulting in death or injury by impairing breeding, feeding, sheltering behavior
- Harass: Actions creating a likelihood of injury by disrupting breeding, feeding, sheltering behaviors

Section 7 Trigger (old regs)

- May Affect: When a proposed action poses <u>any</u> effect on listed species or critical habitat.
- If Not Likely to Adversely Affect: Concurrence Letter
- If Adverse Affect: Biological Opinion

Section 7 Trigger (new regs)

- May Affect: When a proposed action poses <u>any</u> effect on listed species or critical habitat.

- Not Applicable: No take, AND
  - No effect on listed species or critical habitat, OR
  - Effects are from global processes meeting certain criteria:
    - Can't be reliably predicted at species range scale
    - Impacts are small and insignificant
    - Potential risk of harm is remote, OR
  - Effects are not capable of being measured meaningfully or the effects are wholly beneficial.

Same as former "Not Likely to Adversely Affect" Determination

Section 10 Trigger

- Non-Federal Actions
- Incidental Take occurs

FWS Permitting Process

Section 7 Consultation

- Begins with early coordination when requested by agency
- Project cannot jeopardize a species or adversely modify critical habitat
- Action agency must submit a Biological Assessment:
  - Description of the action
  - Description of the action area
  - Description of any listed species or critical habitat
  - Description of how the action may affect any listed species or critical habitat and an analysis of any cumulative effects
  - Any other relevant available information/reports on the action, the affected listed species, or critical habitat
- Product: a Biological Opinion with Incidental Take Statement

FWS Permitting Process

Section 10 Permitting

- Applicant must develop a Habitat Conservation Plan
  - Minimize and Mitigate to maximum extent practicable
  - Cannot Jeopardize or Adversely Modify
  - Take must be incidental
  - Internal Section 7 consultation
- Applicant must assure funding for life of Plan
- NEPA must be done
- Long term monitoring and adaptive Management
- No surprises

Major Factors that Affect Permitting Timeline

- Existing workload
- Early planning/project scheduling
- Poor Biological Assessment
  - Insufficient information about PD
  - Biological surveys should be coordinated with FWS before they occur
  - Insufficient analysis of effects
- Changes in Project Description delays time frames

Facilitating the Permit Process

- Pre-filing meetings
- Developing guidelines
- Hiring a regional energy coordinator
- Supplementing staff
- Developing Best Management Practices (BMPs)
- Exploring alternative procedural methods for consultations

Suggestions for Better Inter-agency Coordination

- Know your agency counterparts
- Work at lower levels
- Initiate consultation no earlier than the CEC's Preliminary Staff Assessment and when draft PEIS goes out for public comment
- Produce FWS data needs document that CEC and CPUC can ensure that applicants follow early on