

Presentation by U.S. Fish and Wildlife Service

California Energy Commission BMP Workshop

October 13, 2009

Victorville, California

1. Desert Tortoise Survey Protocols

- The BMPs contain the 2009 Protocol; these are slightly different than the 1992 protocols.
- The primary difference is that the new protocols include equations that allow us to estimate densities of desert tortoises on a site.
- Our survey protocols are **recommendations** that are designed to provide the best opportunity to find desert tortoises; we cannot require people to follow these guidelines.
- However, if someone surveys for desert tortoises in a manner that does not provide good opportunities to detect desert tortoises, we may not accept the results.
- Talk to agencies beforehand if you want to modify the protocol.
- The pre-filing calls that CEC hosts are a good time to have such discussions.
- We are looking at some comments on the 2009 protocols now and may make some minor revisions in the next few months. If you have comments on the protocols, please let us know (ray_bransfield@fws.gov).

2. Raven Protocols

- The number of common ravens has increased dramatically in the desert since we started building houses and growing crops there. Common ravens eat young desert tortoises. Any activities we undertake in the desert have the potential to increase the number of common ravens.
- To reduce the attractiveness of specific sites, the BMPs contain measures that need to be implemented on-site measure to reduce attractiveness of sites to common ravens. These include eliminating nesting sites, not feeding common ravens, not providing water, etc.
- Regardless of the effectiveness of these measures, common ravens are still likely to use new energy sites to some degree, then fly into the desert and prey on desert tortoises. For this reason, the second prong of our approach to managing common ravens off-site is to assess each project a fee that the FWs will use to monitor range-wide effects and manage CRS to reduce predation.

3. Translocation of desert tortoises

- Regardless of what legal pathway we take, desert tortoises may have to be moved away from some project sites.
- The disposition of these desert tortoises poses a series of complicated issues.
- The FWS's Desert Tortoise Recovery Office is working on guidance that will be part of BMPs to address this issue. Questions that we will need to address in most cases are:
- Are appropriate translocation sites available?
- How do we translocate desert tortoises without spreading disease?
- What are the impacts on resident desert tortoises?
- What is the best way to monitor translocated and possibly resident desert tortoises?
- Is the owner or manager of the translocation site willing to accept desert tortoises?
- Is another NEPA document needed?

4. Section 7 verses section 10(a)(1)(B) of the Federal Endangered Species Act

Aspect	Section 7	Section 10(a)(1)(B) (incidental take permit, habitat conservation plan)
When is each appropriate to use?	When a federal connection to the project exists (e.g., funding or a permit is needed from a federal agency)	When NO federal connection exists
Measures to avoid and reduce impacts	No difference	No difference
Requirement to avoid jeopardy to the species or adverse modification of its critical habitat	This is the basic requirement of section 7 of the FESA.	To issue an incidental take permit, the FWS must comply with the FESA, which means we cannot issue a permit if jeopardy or adverse modification is likely.
Time limits	135 days from the time that the FWS receives all the information it needs to complete its biological opinion.	No mandated time limit.
Assurances (funding, unforeseen circumstances, etc.)	If the project or other situations change, the FESA requires the Federal agency re-initiate formal consultation.	Because non-federal entities are not required to re-initiate, issues related to funding assurances to the FWS and changed circumstances must be resolved prior to the issuance of the incidental take statement.
National Environmental Policy Act	It is the responsibility of the Federal agency because it is undertaking the Federal action.	It is the responsibility of the FWS because it is undertaking the Federal action of issuing an incidental take permit.

Compensation	Not required under section 7. If other agencies require compensation under their authorities, we like to work with those agencies and the proponent to ensure that any compensation furthers the recovery of the species.	Under section 10(a)(1)(B), one of the issuance criteria is that the effects of the taking must be minimized and mitigated to the maximum extent practicable. Our goal is to require compensation that furthers the recovery of the species.
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If you have any questions regarding this letter, please contact Ray Bransfield of the Ventura Fish and Wildlife Office at (805) 644-1766, extension 317, or ray_bransfield@fws.gov.