
From: Garwin Yip - NOAA Federal <garwin.yip@noaa.gov>
Sent: Monday, October 23, 2017 10:57 AM
To: 'Maria.rea@noaa.gov'
Cc: Anita Deguzman - NOAA Affiliate
Subject: Remaining issues with ROC on LTO MOU
Attachments: ConsultationAgreement_FirstAmended_20171023_Clean.docx

Maria,

Attached is a clean version of the ROC on LTO MOU with the 4 remaining issues highlighted (some are repeated multiple times in the MOU but only highlighted once). Below is a summary of each of the issues, and current disposition. Please advise on NMFS decision, or need for elevation. Thanks.

-- Consideration of California WaterFix operations in the ROC on LTO Unresolved.

++ PWAs really don't want them included because of uncertainty in its implementation. Along with this issue, they want a shorter duration of the ROC so even if CWF will be implemented, it would not need to be considered in this go around. Tom Birmingham thinks that a non-CWF BiOp could take 3 years rather than a full-blown ROC that may take 5 years.

++ Potential resolution (seems OK to me):

== Section 5.1, "Goals and Objectives," says "...future operations of potential new components of the CVP and SWP, as necessary and appropriate."

== Language leaves the future possibility without being committal either way, which may be appropriate in the MOU.

- NMFS to check on **One BO to the extent feasible** Resolved, pending confirmation. Section 5.1, 8th bullet: The expectation, "Preparing a joint BiOp issued by the USFWS and NMFS, or two closely coordinated BiOps issued separately by USFWS and NMFS." was edited to read, "**To the extent feasible, preparing a joint BiOp issued by the USFWS and NMFS.**" All were OK with the edit, including me, but I also indicated that I would check with my management to confirm.

- economic and technological feasibility of RPA Unresolved.

++ Section 5.4.7, Public Water Agencies, second to last bullet: "how the alternative is economically and technologically feasible (see 50 CFR 402.02)" was inserted.

++ Not part of WIIN Act, but part of the ESA section 7 regulations (which would apply to the action agency and applicant, and not necessarily non-Federal representatives).

++ USFWS is OK with this insertion. Are we?

- PWA input on USFWS or NMFS's RPA Unresolved.

++ Section 5.4.7, Public Water Agencies, last bullet is new: "That, in the event that USFWS or NMFS reaches a jeopardy or adverse modification determination, will have the opportunity to provide input regarding possible reasonable and prudent alternatives to the proposed action."

++ Not part of WIIN Act, but part of the ESA section 7 regulations (which would apply to the action agency and applicant, and not necessarily non-Federal representatives).

++ USFWS is OK with this insertion. Are we?

-Garwin-

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