
From: Barry Thom - NOAA Federal <barry.thom@noaa.gov>
Sent: Monday, December 10, 2018 3:41 PM
To: _NMFS WCR Clearance-Taskers
Cc: Lindsey Kraatz - NOAA Affiliate; Emma Htun - NOAA Affiliate; Ming Warren - NOAA Federal; Scott Rumsey; Alesia Read - NOAA Federal
Subject: Re: CA Water PM update information
Attachments: CA Water PM Updates_bat.docx; Western Water Presidential Memo_Response Memo_11.16.18_Draft (2).docx

I've attached the updated memo along with the referenced draft DOI/DOC memo for awareness.

Thanks,

Barry

On Mon, Dec 10, 2018 at 3:31 PM Alesia Read - NOAA Federal <alesia.read@noaa.gov> wrote:
+ Scott and WCR tasker email box - action due by COB EST Tuesday 12/11.

Thanks Lindsey!

Sent from my iPhone

On Dec 10, 2018, at 6:01 PM, Lindsey Kraatz - NOAA Federal <lindsey.kraatz@noaa.gov> wrote:

Dear Barry,

Thank you for all your help today. As always your updates are most appreciated.

As you heard on the call, the Admiral is going to the Colorado River Water Users Association Annual Meeting on Thursday and Friday. We will be preparing materials tomorrow and finalizing everything Wednesday. Would it be possible to get your updates for Section 2 and 6 by COB tomorrow?

If it is of any use, I included the brief memo that I drafted for the Nov. 19 meeting we had with Admiral Gallaudet. You are welcome to provide your specifics into that document or provide in an email if that is easier. As you will see, the information I have in the memo attached is high level and not very specific, we would certainly need much more information, that of which you discussed today, for the Admiral to speak cogently about the full EO.

Lastly, below is the definition of environmental baseline per the new ESA reg text. Please let me know if you have any questions or concerns.

Thank you once again,

Best,
Lindsey

Definition of Environmental Baseline

We proposed a stand-alone definition for “environmental baseline” as referenced in the discussion above in the proposed revised definition for “effects of the action.” The proposed definition read:

Environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process.

In the proposed rule, we also sought comment on potential revisions to the definition of “environmental baseline” as it relates to ongoing Federal actions. The Services received numerous comments regarding the proposed definition of “environmental baseline” and the consideration of ongoing Federal actions.

In response to these comments and upon further consideration, through this final rule, we are revising § 402.02 to read:

Environmental baseline refers to the environmental condition of the listed species or its designated critical habitat without the consequences to the listed species or designated critical habitat caused by the proposed action. The environmental baseline includes the consequences to listed species or designated critical habitat from the past and present impacts of all Federal, State, or private actions and other human activities in an action area, the anticipated consequences of all proposed Federal projects in an action area that have already undergone formal or early section 7 consultation, and the consequences of private or State actions which are contemporaneous with the consultation in process. The consequences to listed species or designated critical habitat from ongoing agency activities or existing agency facilities that are not within the agency’s discretion to modify are part of the environmental baseline.

We revised the definition of environmental baseline in order to make it clear that “environmental baseline” is a separate consideration from the effects of the action. In addition, we added a sentence to clarify that the consequences of ongoing agency activities or existing agency facilities that are not within the agency’s discretion to modify are included in the environmental baseline. This third sentence is specifically intended to help clarify environmental baseline issues that have caused confusion in the past, particularly with regard to impacts from ongoing agency activities or existing agency facilities that are not within the agency’s discretion to modify.

We added this third sentence because we thought it was necessary to explicitly answer the question as to whether ongoing consequences of past or ongoing activities or facilities should be attributed to the environmental baseline or to the effects of the action under consultation when the agency has no discretion to modify either those activities or facilities. The Services have concluded that, in general, ongoing consequences attributable to ongoing activities and the existence of agency facilities are part of the environmental baseline when the action agency has no discretion to modify them. Courts have recognized that the consequences from the existence of a dam, for example, are in the baseline for most consultations concerning dam operations, even if operations of the dam are under consultation. Further, courts have recognized, and the regulations assert, that section 7 only applies to actions taken by an agency in which there is discretionary involvement or control. The Supreme Court concluded that it was reasonable for the Services to narrow the application of section 7 to an action agency’s discretionary actions because it made no sense to consult on actions over which the action agency has no discretionary involvement or control. *National Ass'n of Home Builders v. Defenders of*

Wildlife, 551 U.S. 644, 667-71 (U.S. 2007) (“Home Builders”). It follows, then, that consequences from those non-discretionary duties should be in the environmental baseline. Attributing ongoing consequences to the environmental baseline does not mean that those consequences are ignored. As discussed in more detail below, the environmental baseline is an important representation of the health of the species or the critical habitat. To the extent ongoing consequences are adverse to a species, the environmental baseline and status of the species or critical habitat evaluations will reflect the impact of those consequences.



Lindsey Kraatz, Ph.D.

Program Coordination Officer
Office of the NOAA Administrator

Lindsey.Kraatz@noaa.gov

(w): (202) 482-1172

(c): (240) 678-7958



<CA Water PM Updates.docx>

--

Barry Thom

Regional Administrator

Office: 503-231-6266



Find us online

www.westcoast.fisheries.noaa.gov