



1.0 Introduction

5. Equitably distribute costs for the preparation and implementation of the MSHCP among local, state, and federal participants, including equitably distributing costs among both new Development and general contribution. Federal and state contributions shall be made as provided in the Implementing Agreement (IA) and the MSHCP.
6. Expedite the MSHCP development and approval process, and complete it within a reasonable period of time, taking into consideration the complexity of the issues involved. All parties agree to use their best efforts to ensure that, if all legal requirements are met, the MSHCP and its environmental documents will be completed and approved within two years of the commencement of the MSHCP planning process.
7. Through MSHCP Conservation actions, promote the recovery of species that occur within the Plan Area that are listed as threatened or endangered under CESA and/or FESA; taking into account factors related to the range of each species.
8. Decisions by all parties must be made in a timely fashion and in compliance with agreed time parameters.
9. Actively encourage public input and participation in order to obtain public support for the Conservation and economic benefits that the parties and participants seek from the MSHCP.

The County became the lead for the multiple-species planning effort with the initiation of the RCIP in 1999.

1.2.4 Regulatory Context

The approval of the MSHCP and execution of the IA by the Wildlife Agencies will allow them to issue Take Authorizations to the signatories of the IA. Issuance of Take Authorization to the local jurisdictions will allow Plan participants to implement land use decisions consistent with the MSHCP without project-by-project review and permitting by the Wildlife Agencies. A local, streamlined approach to planning for Endangered/sensitive Species will result in greater economic development certainty and provide for and maintain biological diversity by creating an interconnected MSHCP Conservation Area in the Plan Area. In addition to the preservation of species and associated Habitats, the MSHCP Conservation Area will provide open space and recreational opportunities, which will enhance the quality of life in Riverside County.



1.0 Introduction

➤ Federal Regulatory Framework

Section 9 of the 1973 FESA prohibits the "Take" of wildlife species listed as endangered; it prohibits the Take of species listed as threatened unless otherwise specifically authorized by regulation. Take, as defined by the 1973 FESA, means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct."

In the 1982 amendments to FESA, Section 10 allows for the "Incidental Take" of Endangered and Threatened Species by non-federal entities. The 1973 FESA defines Incidental Take as Take that is "incidental to, and not the purpose of, the carrying out of an otherwise lawful activity." Prior to 1982, non-federal parties undertaking otherwise lawful activities that were likely to result in Take of listed species risked violating the provisions of Section 9 but had no recourse under the law for exemption. Until that time, only Take occurring during scientific research or Conservation actions could be authorized under FESA. The "Incidental Take permit" process was established under Section 10(a)(1)(B) of the 1973 FESA precisely to resolve this difficulty.

Section 10(a)(2)(A) of the 1973 FESA requires an applicant for an Incidental Take permit to submit a "Conservation Plan" or "Habitat Conservation Plan (HCP)." Preparation of this MSHCP complies with this requirement. As outlined in the Habitat Conservation Planning and Incidental Take Permit Processing Handbook, published by the USFWS and the National Marine Fisheries Service (NMFS) in November 1996, under Section 10(a)(2)(A) of the 1973 FESA, and federal regulation [50 CFR 17.22(b)(1), 17.32(b)(1), and 222.22], a conservation plan submitted in support of an Incidental Take permit application must detail the following information:

- 1) Impacts likely to result from the proposed Taking of the species for which permit coverage is requested;
- 2) Measures the applicant will undertake to monitor, minimize, and mitigate such impacts;
- 3) Funding that will be made available to undertake such measures and the procedures to deal with unforeseen circumstances;
- 4) Alternative actions the applicant considered that would not result in Take, and the reasons why such alternatives are not being utilized; and



1.0 Introduction

- 5) Additional measures USFWS may require as necessary or appropriate for purposes of the plan.

USFWS and NMFS published a final addendum to the HCP Handbook on June 1, 2000 (65 FR 35242). This addendum, also known as the Five-Point Policy guidance, provides clarifying guidance for the two agencies in conducting the Incidental Take permit program and for those applying for an Incidental Take permit under Section 10(a)(1)(B) of the 1973 FESA. Developed to promote efficiency and nationwide consistency within and between the USFWS and NMFS and to improve the HCP program, the five components addressed in the policy are: (1) biological goals, (2) adaptive management, (3) monitoring, (4) permit duration, and (5) public participation.

USFWS is charged with implementing not only the 1973 FESA but also the Fish and Wildlife Coordination Act (16 USC 661-666c) and Fish and Wildlife Act of 1956 (16 U.S.C. 742[f] et seq.). However, it is section 10(a)(1)(B) of FESA that authorizes the USFWS to issue a permit pursuant to Section 10(a)(1)(B) for the Incidental Take of species listed as threatened and endangered. Moreover, the legislative history of the Incidental Take permit process clearly indicates that Congress also intended for Unlisted Species to be addressed in HCPs.

"Although the conservation plan is keyed to the permit provisions of the Act, which only apply to listed species, the Committee intends that conservation plans may address both listed and unlisted species. In the event that an unlisted species addressed in the approved conservation plan subsequently is listed pursuant to the Act, no further mitigation requirements should be imposed if the conservation plan addressed the conservation of the species and its habitat as if the species were listed pursuant to the Act (H.R. Report No. 97-835, 97th Congress, Second Session; and 50 FR 39681-39691)."

On February 23, 1998 (63 FR 8859), USFWS and NMFS published the "No Surprises" final rule that revised parts 17 (USFWS) and 222 (NMFS) of Title 50 of the Code of Federal Regulations, which was necessary to implement the HCP assurances. This rule provides that, as long as the HCP is being properly implemented, the federal government will not require any additional lands or money from the Permittee(s) in the event of unforeseen changed circumstances and that additional measures to mitigate reasonably unforeseeable changed circumstances will be limited to those changed circumstances specifically identified in the HCP (and only to the extent of the mitigation specified). Such changed circumstances may involve listing of new species. Changed Circumstances and No Surprises are described in *Section 6.8* of this document.



1.0 Introduction

➤ State Regulatory Framework

Section 2080 of the California Fish and Game Code ("FGC") prohibits the "Take" of species listed under the FGC as candidate, Threatened, or Endangered Species. FGC section 1908 prohibits the Take, possession or sale of rare native plants. FGC section 3503 prohibits the Take, possession or needless destruction of the nest or eggs of any bird. FGC section 3503.5 prohibits the Take, possession or destruction of any birds-of-prey or their nests or eggs. The NCCP Act, FGC section 2800 et seq., identifies the process and standards for NCCPs. FGC section 2835 authorizes CDFG to permit the Take of any covered species whose Conservation and management are provided for in an NCCP approved by the CDFG. This includes listed (rare, threatened, or endangered) and Unlisted Species.

The state legislature found that NCCPs are an effective tool in protecting California's natural diversity and that they will reduce conflicts between efforts to protect the state's wildlife heritage and the reasonable use of natural resources for economic development. The legislature further found that development of NCCPs promotes the coordination and cooperation among public agencies, landowners, and other private interests, provides a mechanism by which landowners and Development proponents can effectively address concerns about cumulative impacts, promotes Conservation of unfragmented Habitat areas, promotes multiple-species and multiple-Habitat management and Conservation, provides one option for identifying and ensuring appropriate mitigation that is roughly proportional to impacts on fish and wildlife, and promotes the Conservation of broad-based natural communities and species diversity. NCCPs provide for regional or areawide protection and perpetuation of plants, animals, and their Habitats while allowing compatible land use and economic activity; they are a cooperative planning process that involves local, state, and federal agencies and the public, including landowners, in the MSHCP Plan Area.

The NCCP Act, as amended, FGC section 2830(d), provides for CDFG to authorize the Incidental Take of identified species for NCCPs that are developed pursuant to a Planning Agreement entered into before January 1, 2001, and for which CDFG finds that the plan has been developed using a public participation process and scientific analysis process substantially in conformance with the intent of paragraph (5) of subdivision (b) of Section 2810 and Section 2815.

FGC section 2810, subdivision (b), paragraph (5) addresses the inclusion of independent scientific input to assist CDFG and plan participants to do the following:



1.0 Introduction

- 1) Recommend scientifically sound Conservation strategies for species and natural communities proposed for coverage by the plan;
- 2) Recommend a set of reserve design principles that addresses the needs of species, landscapes, ecosystems, and ecological processes in the Plan Area;
- 3) Recommend management principles and Conservation goals that can be used in developing a framework for the monitoring and adaptive management component of the plan; and
- 4) Identify data gaps and uncertainties so that risk factors can be evaluated.

FGC section 2815 addresses the public participation process for plan development to ensure that interested persons, including landowners, have adequate opportunity to provide input to lead agencies, state and federal Wildlife Agencies, and others involved in preparing the plan. The public participation process may be achieved through public working groups and advisory committees and includes the following:

- 1) Making the draft NCCP available to the public for review and comment at least sixty (60) days prior to its adoption and providing documents to the public at least ten (10) days prior to any public hearing on the documents;
- 2) Making draft plans, memoranda of understanding, maps, conservation guidelines, species coverage lists, and other planning documents available to the public;
- 3) Using a public outreach program to provide access for persons interested in the plan to obtain information about it.

FGC section 2820(f) authorizes CDFG to provide assurance to plan participants commensurate with long-term conservation assurances and associated with implementation measures pursuant to the approved plan and further states:

When providing assurances pursuant to this subdivision, the department's determination of the level of assurances and the time limits specified in the Implementing Agreement for assurances may be based on localized conditions and shall consider all of the following:

1.0 Introduction



The level of knowledge of the status of the covered species and natural communities.

The adequacy of analysis of the impact of Take on covered species.

The use of the best available science to make assessments about the impacts of Take, the reliability of mitigation strategies, and the appropriateness of monitoring techniques.

The appropriateness of the size and duration of the plan with respect to quality and amount of data.

The sufficiency of mechanisms for long-term funding of all components of the plan and contingencies.

The degree of coordination and accessibility of centralized data for analysis and evaluation of the effectiveness of the plan.

The degree to which a thorough range of foreseeable circumstances are considered and provided for under the adaptive-management program.

The size and duration of the plan.

If there are unforeseen circumstances, additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources shall not be required without the consent of plan participants for a period of time specified in the Implementing Agreement, unless the department determines that the plan is not being implemented consistent with the substantive terms of the Implementing Agreement.

1.2.5 Public Outreach

Public involvement is an essential element of preparing a regional HCP such as this MSHCP. To ensure that the MSHCP, the General Plan, and CETAP reflect the priorities and vision of the