



In Reply Refer to:
FWS/R8/AES

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Pacific Southwest Region
2800 Cottage Way, Room W-2606
Sacramento, California 95825-1846



DEC 06 2013

Memorandum

To: Ecological Services Project Leaders, Region 8

From: *Action* Assistant Regional Director, Ecological Services, Region 8

Subject: Regional Policy on "No Effect" Determinations

As you know, the implementing regulations for section 7 of the Endangered Species Act do not require a Federal action agency to obtain written concurrence from the Service if they determine that their proposed action will not affect listed species or critical habitat, nor do these regulations provide a legal mechanism for the Service to concur with such a determination. Recently, Region 8 has been involved in litigation related to actions for which the action agency requested our concurrence with their "no effect" determination. It is apparent that further clarification is needed on this issue.

Although periodic, interagency coordination on the proper analytical framework for effect determinations is important, given our budget and staffing constraints, it is also imperative that we prioritize our section 7 workload to focus our efforts on those activities that we are legally mandated to complete. If your staff review these requests, even though the section 7 handbook contemplates that the Service may concur on an action agency's "no effect" determination, as a matter of regional policy do not provide concurrence or non-concurrence in writing (including e-mail). You should acknowledge that we have no regulatory or statutory authority for concurring with "no effect" determinations and remind the requester that it is the action agency's responsibility to make effect determinations for compliance with section 7(a)(2).

If an action agency requests technical assistance on an effect determination, you are encouraged to assist insofar as your workload and staffing constraints allow consistent with our priorities. I encourage you to continue using innovative methods for communicating best available information to action agencies to assist them in making well-informed determinations, such as through the posting of species accounts and other guidance on your field office websites.

If you have any questions on this policy, please contact Jana Affonso at 916-414-6593.

cc:
Region 8 ARDs