

## **Appendix H**

### **Endangered Species Act Section 7 Compliance Templates**

Under Section 7 of the Endangered Species Act (ESA), every federal action agency must ensure that its action does not jeopardize the continued existence of a listed species, or destroy or adversely modify a listed species' critical habitat.

Agencies satisfy that obligation through consultation with the appropriate consulting agency, the U.S. Fish & Wildlife Service (USFWS) and/or National Marine Fisheries Service (NMFS), under ESA Section 7. Informal consultation concludes when the action agency concludes its action "may affect but is not likely to adversely affect" listed species or destroy/adversely modify critical habitat and the consulting agency concurs with that determination. Formal consultation is required where the proposed action is likely to adversely affect listed species. It concludes with the relevant consulting agency's issuance of its Biological Opinion.

Based on SDG&E's experience implementing the existing 1995 Subregional Natural Community Conservation Plan (NCCP), it has identified a need for a consistent approach to future ESA Section 7 consultations that involve Covered Activities so that the streamlining benefits of an approved and permitted 2021 Habitat Conservation Plan Amendment (HCP Amendment) can be fully realized. SDG&E developed this appendix to assist SDG&E staff, contractors (i.e., environmental consultants), and federal agency staff in completing Section 7 consultation, with a focus on preparing a Biological Evaluation (BE) for HCP Amendment Covered Activities that require approval or authorization from a federal agency such as the U.S. Army Corps of Engineers, U.S. Forest , Bureau of Land Management, Department of Defense (e.g., U.S. Navy or U.S. Marine Corps), or the Bureau of Indian Affairs. The BE will provide relevant information about listed and proposed species and designated and proposed critical habitat that may be present in the action area, and evaluate potential effects of the agency's action on such species and habitat.

The specific approach to Section 7 consultation will vary based on the federal agency involved, its concerns about the resources being affected, and the extent to which Covered Species may be affected on federal lands or waters subject to federal jurisdiction. To assist federal action agencies in meeting their Section 7 obligations, SDG&E has created several templates to ensure that project descriptions of Covered Activities and *effects determinations* that have already been considered and reached by USFWS in its intra-agency consultation related to its approval of the HCP Amendment and issuance of an amended incidental take permit are consistent with any BE required for Section 7 consultation.

These templates consist of the following:

1. An annotated BE template
2. Two suggested cover letter templates
  - a. Generic cover e-mail from SDG&E to action agency

- b. Generic cover letter for action agency to USFWS
3. A set of cover letter templates to address Covered Species effects determinations under anticipated scenarios:
  - a. Informal consultation – Covered Species and Covered Activities (Effects already considered; *may affect but not likely to adversely affect*)
  - b. Informal consultation – Both Covered and Non-Covered Species (*May affect but not likely to adversely affect*)
  - c. Formal consultation – Both Covered and Non-Covered Species (*May affect and likely to adversely affect*).
4. For ease of reference, SDG&E has included a copy of the U.S. Army Corps of Engineers, General Condition 18, part (f). As a non-federal permittee with a valid ESA section 10(a)(1)(b) incidental take permit with an approved Habitat Conservation Plan, future Section 7 consultations between the U.S. Army Corps of Engineers and the USFWS can benefit from having this general condition available.

Suggested approaches to align information from the HCP Amendment with future BEs for Section 7 consultation are presented in Table 1.

**Table 1**  
**Suggested Approaches to Align Information from the**  
**HCP Amendment with Future BEs for Section 7 Consultation**

<b>Section of Biological Evaluation</b>	<b>SDG&amp;E</b>	<b>Federal Agency</b>
Proposed Action and Project Description	Explain how proposed activities are consistent with Covered Activities included in the HCP Amendment.	Ensure that Covered Activities are consistent with those of the HCP Amendment.
Action Area	Explain how the Action Area is within the HCP Amendment Plan Area.	Ensure that Action Area is within the HCP Amendment.
Species/Critical Habitat Considered	Use Conservation Analysis in Appendix of HCP Amendment to describe current population trends and habitat conditions of Covered Species and associated critical habitat.	Rely on the best scientific and commercial information available.
Effects Analysis	Use Conservation Analysis in Appendix of HCP Amendment to describe effects analyzed for the HCP Amendment.	Evaluate potential effects of the action on listed and proposed species and designated and proposed critical habitat that may be present in the action area.

Section of Biological Evaluation	SDG&E	Federal Agency
Conclusion and Determination of Effects for each protected resource	<ul style="list-style-type: none"> <li>• For Covered Species, effects determinations <u>recommendations</u> in the BE should be THE SAME as those in the intra-agency Section 7 Biological Opinion (BO) prepared by USFWS for the HCP Amendment.</li> <li>• For non-covered species addressed in the intra-agency Section 7 BO, the effects determination <u>does not need to be the same</u> for any future, project-specific BE being prepared for Section 7 consultation.</li> <li>• For Covered Species, relevant HCP Operational Protocols must be listed to support any recommendations of effects determinations. As stated above, recommendations for effects determinations for Covered Species should be THE SAME as those made in the intra-Service BO.</li> </ul>	Ensure that effects determinations recommendations for species addressed in the Biological Assessment are THE SAME as those in the BO (for covered and non-covered species).
Compensatory Mitigation	<ul style="list-style-type: none"> <li>• Explain amount and type of compensatory mitigation that would be deducted from SDG&amp;E's mitigation bank credit accounts. Ensure that off-site, out-of-kind mitigation may be used to satisfy compensatory mitigation requirements.</li> </ul>	Ensure that mitigation totals are correct, pursuant to approved HCP Amendment. Provide rationale for alternative mitigation proposals where on-site, in-kind mitigation is preferred.

## Template Biological Evaluation Outline for Streamlined ESA Section 7 Consultation.

SDG&E will utilize the following templates when a project is on federal land or triggers a federal action (i.e., it is funded, permitted, or authorized in whole or part by any federal agency [action agency]). The following Frequently Asked Questions, based on years of HCP implementation experience, will benefit both SDG&E (applicant) and federal agencies when Section 7 is required.

### **Why is Section 7 required when SDG&E has an approved HCP?**

Under section 7 of the Endangered Species Act (ESA), every federal action agency has its own obligations that an agency must satisfy. The action agency's obligations under Section 7 are different from and exist independently of SDG&E's ESA obligations and the HCP Amendment.

### **What are the action agency's obligations?**

It must ensure that its action—*what it is giving SDG&E to allow SDG&E to do its work*—does not (i) jeopardize the continued existence of a listed species; or (ii) destroy or adversely modify a listed species' critical habitat.

### **How does the action agency meet its ESA obligations?**

Through consultation with the U.S. Fish and Wildlife Service (USFWS) under ESA Section 7.

*Informal consultation* may be used when the action agency concludes its action “may affect but is not likely to adversely affect” listed species or destroy/adversely modify critical habitat. It ends when USFWS concurs with that determination. The BE template in this appendix is the only template that should be used in this instance. *Formal consultation* is required where the proposed action is likely to adversely affect listed species. It concludes with USFWS's issuance of its Biological Opinion to the action agency. The BE template may be used for formal consultation in coordination with the action agency and USFWS.

### **What is SDG&E's role?**

SDG&E helps the action agency satisfy the action agency's ESA Section 7 obligations.

### **How does SDG&E help the action agency?**

Because SDG&E understands its project and the details of the HCP Amendment, SDG&E helps explain for the action agency (and USFWS) how the proposed federal action may affect listed species and assists the action agency to secure USFWS's concurrence, where appropriate, that the proposed action is not likely to adversely affect listed species or adversely modify critical habitat.

### **How does SDG&E help to streamline concurrence?**

These templates are designed to help streamline the agencies' informal consultation by providing relevant information about listed species and critical habitat in the action area, evaluating potential effects of the agency's action on such species and habitat, and supporting a *not likely to adversely affect determination*, where appropriate. Templates

include a biological evaluation with that analysis, action agency cover letter seeking USFWS's concurrence, and an SDG&E transmittal email sending the package to the action agency.

## Biological Evaluation Template

### I. Introduction

Section 7 of the Endangered Species Act (ESA) requires federal agencies to determine whether their actions may affect listed species and designated critical habitat (hereinafter, protected resources). If so, the federal agency must either request concurrence from the U.S. Fish & Wildlife Service (USFWS) that the action “may affect, but [is] not likely to adversely affect” protected resources, or request initiation of formal consultation.<sup>1</sup>

Here, SDG&E is proposing to [briefly specify the proposed action (e.g., wood to steel pole replacement)] on [identify location of project (federal land)]. To undertake its project, SDG&E has requested that [the action agency undertake the federal action (e.g., issue 404 permit)].

This evaluation provides relevant information about listed and proposed species and designated and proposed critical habitat that may be present in the action area<sup>2</sup> and evaluates potential effects of the agency's action on such species and habitat. As discussed herein, given SDG&E's 1995 Subregional Natural Community Conservation Plan and Habitat Conservation Plan (Subregional Plan), 2021 Habitat Conservation Plan Amendment (HCP Amendment), along with SDG&E's commitment to implement its project in accordance with the Operational Protocols prescribed therein, and other considerations discussed below, this evaluation concludes that the proposed action may affect, but is not likely to adversely affect, any species listed as threatened or endangered [add Critical Habitat if appropriate] by USFWS under the ESA, 16 U.S.C. section 1531 *et seq.*

Suggestions for this section include (1) Describe the proposed project in the context of Covered Activities identified in the HCP Amendment.

### II. SDG&E's Subregional Plan and 2021 HCP Amendment

Habitat Conservation Plans (HCPs) are planning documents that are required as part of an application for an incidental take permit under section 10 of the ESA. HCPs must meet the following permit issuance criteria of section 10(a)(2)(B) of the ESA: (i) take will be incidental; (ii) the applicant will, to the maximum extent practicable, minimize and

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<sup>1</sup> “May affect, but not likely to adversely affect” means that all effects are beneficial, insignificant, or discountable. Beneficial effects have contemporaneous positive effects without any adverse effects to the species or habitat. Insignificant effects relate to the size of the impact and include those effects that are undetectable, not measurable, or cannot be evaluated. Discountable effects are those extremely unlikely to occur. These determinations require written concurrence from USFWS.

<sup>2</sup> See Section III, *infra*. ESA regulations define action area as “all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.” 50 C.F.R. § 402.02.

mitigate the impacts of the taking; (iii) the applicant will ensure that adequate funding for the plan will be provided; (iv) taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (v) other measures, as required by USFWS, will be met.

### **1995 Subregional Plan**

In the mid-1990s, SDG&E developed its Subregional Plan with USFWS and the California Department of Fish and Wildlife (CDFW) pursuant to the Natural Community Conservation Planning Act (NCCPA), California Fish and Game Code section 2800 *et seq.*, and the ESA. The Subregional Plan was designed to avoid, minimize, and mitigate impacts to numerous Covered Species and their habitat while allowing SDG&E to undertake Covered Activities, essentially those needed to install, maintain, operate, repair, and expand its existing gas and electric system. In 1995, USFWS determined that the Subregional Plan met the permit issuance criteria of ESA section 10(a)(2)(B) and issued SDG&E an incidental take permit that authorized a total of 400 acres of habitat modification because of SDG&E's Covered Activities before requiring an amendment.

### **2021 HCP Amendment**

The 2021 HCP Amendment maintains and bolsters the Operational Protocols outlined in the 1995 Subregional Plan. For instance, SDG&E will continue to (i) provide comprehensive annual training to all SDG&E personnel working within natural habitats (Section 5.1.2); (ii) provide a process to ensure SDG&E activities comply with the HCP Amendment (Section 5.1.3); and (iii) implement Species-Specific Protocols as needed to avoid and minimize impacts to species (Section 5.1.13). To achieve its goal of maintaining habitat quality for covered species, SDG&E will implement Operational and Species-Specific Protocols, described in Section 5.1 of the HCP Amendment, to minimize impacts to habitat in the vicinity of SDG&E activities, and implement a robust habitat restoration and enhancement program as described in Section 5.2 to restore temporary impact areas within 5 years. The HCP Amendment also provides a process to evaluate and restore certain access roads. And, to meet SDG&E's goal of contributing to the network of permanently protected and managed lands in the service area that support species and their habitats, the HCP Amendment provides sufficient mitigation for unavoidable permanent impacts to species covered by the HCP Amendment or their habitat through conveyance of land to third-party-approved conservation land managers or provide funding for programs/in-lieu fees (Section 5.4).

[In 2021, USFWS determined that the HCP Amendment met the permit issuance criteria of section 10(a)(2)(B) of the ESA and issued SDG&E an amended incidental take permit that authorized incidental take of certain species provided that SDG&E implement and comply with the HCP Amendment, which included a 400-acre increase to the Subregional Plan's permanent impact maximum; 210 acres of temporary impacts; and an additional 210 acres for fuels modification work, before requiring a further amendment.]

### III. Proposed Action and Project Description

The proposed federal action is [X]. If the agency undertakes this action, SDG&E will be [authorized/permitted] to undertake its [X project.] The remainder of this section describes the project, including its location, when it is expected to occur, who is going to undertake the project, and how the project will be accomplished.

Because the proposed action and SDG&E's project are fully within the geographic boundaries of [SDG&E's Subregional Plan and/or HCP Amendment], this section also identifies applicable Operational Protocols [and Species-Specific Protocols] required therein, and other conservation measures that are included in its project,<sup>3</sup> which will be implemented to avoid, reduce, or eliminate adverse effects or that would benefit the protected species or critical habitat. Typical information that should be discussed includes:

- Subdivide proposed action into project elements (e.g., construction, operation, and maintenance), if applicable.
- Describe the where, when, and how for each project element.
- Include a map delineating the location of each project element.
- Identify *specific* Operational Protocols and applicable Species-Specific Protocols from the HCP Amendment that apply. Identify any Operational Protocols that would apply to non-covered species.
- Identify any additional conservation measures that will be incorporated into the project design.

### IV. Action Area

To determine whether a species or critical habitat may be present, the "action area" must be delineated. ESA regulations define action area as "all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action." 50 C.F.R. § 402.02. The action area encompasses the geographic extent of environmental changes that will result directly and indirectly from the action.<sup>4</sup>

Here, all areas affected directly or indirectly by the federal action are within the geographic boundaries of SDG&E's Subregional Plan and HCP Amendment.

[delineate the geographic area that will be affected, i.e., where the physical, chemical, and biotic effects will occur].

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<sup>3</sup> Other measures beyond those in the HCP Amendment that further reduce the effects on protected resources can be added to the consultation as conservation measures.

<sup>4</sup> These effects are consequences that would not have occurred *but for* the proposed action and are *reasonably certain to occur*. These effects may be indirect, in that they occur later in time and outside the immediate area involved in the action (e.g., dust, erosion). See Section V *infra*; 50 C.F.R §§ 402.02, 402.17.

[Describe the physical and biological attributes of the action area (e.g., topography, vegetation, condition, and trend)].

[map delineating where the action will occur]

Delineate the specific areas that will be affected by each of the project elements.

Identify any ongoing activities that may be affecting the species or habitat.

#### V. Species/Critical Habitat Considered

Identify listed species and critical habitat that “may be present” in the action area. Based on that review, the following species and critical habitat “may be present” in the action area:

- LIST SPECIES.
- LIST CRITICAL HABITAT.

Describe how species are either (1) Covered by the HCP Amendment or (2) Not covered by the HCP Amendment. [For each protected resource that “may be present” *use conservation analysis in appendix of HCP Amendment* to describe the current population and habitat conditions (status and trend, if known) in the action area.]

#### VI. Effects Analysis

This section evaluates potential effects of the action on listed and proposed species and designated and proposed critical habitat that may be present in the action area. Effects of the action are all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action. 50 C.F.R. § 402.02.

To be considered an effect of a proposed action, a consequence must be caused by the proposed action (*i.e.*, the consequence would not occur but for the proposed action and is reasonably certain to occur). 50 C.F.R. § 402.17. A conclusion of reasonably certain to occur must be based on clear and substantial information, using the best scientific and commercial data available. *Id.* Considerations for determining that a consequence to the species or critical habitat is not caused by the proposed action include, but are not limited to:

(1) The consequence is so remote in time from the action under consultation that it is not reasonably certain to occur; or

(2) The consequence is so geographically remote from the immediate area involved in the action that it is not reasonably certain to occur; or



(3) The consequence is only reached through a lengthy causal chain that involves so many steps as to make the consequence not reasonably certain to occur. *Id.*

ADDRESS ALL THAT APPLY TO THIS PROJECT:

- For each species or critical habitat unit:
  - *explain* how it will or will not be exposed to the project elements; be sure to consider effects to all life stages (eggs, larvae, neonates, juveniles, subadults, adults).
  - *explain* how Operational Protocols and any conservation measures will avoid and minimize effects.
  - *describe* the anticipated response (e.g., none, abandoned the area, decrease foraging success, reduced fecundity, injury, death, etc.) from any likely exposure.

[NOTE: Your discussion should provide the basis for and support a not likely to adversely affect determination.]

VII. Conclusion and Determination of Effects for each protected resource

For each protected resource: Explain that all effects on Covered and non-Covered Species from Covered Activities have been previously analyzed and effects from SDG&E's proposed project are consistent with those analyzed in the USFWS intra-service Biological Opinion prepared for the HCP Amendment. Include a recommended Section 7 determination of "may affect, but not likely to adversely affect" finding and provide your rationale.

In sum, given SDG&E's existing Subregional Plan, its commitment to implement its project in accordance with the avoidance and minimization measures prescribed therein, and other considerations discussed above, the proposed action is not likely to adversely affect any species listed as threatened or endangered [add Critical Habitat if appropriate] by USFWS under ESA.

This evaluation supports the agency's requested concurrence with that determination from USFWS.

VIII. Literature Cited

IX. List of Contacts Made and Preparers

X. Attachments

A. Relevant Reports

B. Survey Results

C. Supporting Documents

## **Generic cover email from SDG&E to action agency**

ACTION AGENCY ADDRESS

Re: [PERMIT NUMBER OR PROJECT NAME]

Dear Ms./Mr. \_\_\_\_\_,

We have asked the [agency] to [authorize/fund/permit] San Diego Gas & Electric (SDG&E)'s proposed [our project (e.g., wood to steel replacement project on [San Isabel Reservation])].

[or]

San Diego Gas & Electric (SDG&E) is proposing to undertake [our project (e.g., wood to steel replacement project on [specify federal land])].

Enclosed herewith please find the following:

1. A draft cover letter from your office to USFWS requesting its concurrence that your proposed activity may affect, but is not likely to adversely affect, any species listed as threatened or endangered [add Critical Habitat if appropriate] by USFWS under the Endangered Species Act (ESA).
2. A Biological Evaluation that provides supporting analysis for that determination.

## Generic cover letter for action agency

USFWS ADDRESS

Attn: \_\_\_\_\_

Re: [PERMIT NUMBER OR PROJECT NAME]

Dear Ms./Mr. \_\_\_\_\_,

We are [authorizing/funding/permitting] San Diego Gas & Electric (SDG&E)'s proposed [wood to steel replacement project on [San Isabel Reservation]]. After carefully and independently reviewing the attached Biological Evaluation and for the reasons discussed therein, including SDG&E's commitment to implement its project in accordance with the Operational Protocols prescribed in the 2021 Habitat Conservation Plan Amendment, and other considerations discussed in the attached assessment, we have determined that the proposed activity may affect, but is not likely to adversely affect, any species listed as threatened or endangered [add Critical Habitat if appropriate] by USFWS under the Endangered Species Act (ESA). Additionally, all effects on Covered and non-Covered Species from Covered Activities have been previously analyzed and effects from SDG&E's proposed project are consistent with those analyzed in the USFWS intra-service Biological Opinion prepared for the HCP Amendment.

This letter requests concurrence from your office with our determination. The supporting analysis is provided in the attached assessment.

## Covered Species and Covered Activities

Re: Informal Section 7 Consultation for [project name] in [project location]

Dear: USFWS

This letter serves as a request for initiation of informal Section 7 consultation for [project name]. The [federal agency] is processing a request from SDG&E to [e.g., access land/dischARGE dredge or fill material into waters of the U.S. etc.] so that it may [describe Covered Activity]. The activity is a "Covered Activity" under the [2021 HCP Amendment] and Section 10 incidental take permit issued to SDG&E on [date of permit issuance], and the way the activity is proposed to be carried out is consistent with the HCP.

The proposed action of [e.g., granting access/issuing a permit etc.] may affect the [species name]. The [species] is a "Covered Species" under the HCP and Section 10 permit, and SDG&E is authorized to incidentally take [species] as it undertakes Covered Activities. The proposed action may affect and is likely to adversely affect [species]. The HCP requires implementation of Operational Protocols so that the effects of Covered Activities on Covered Species are minimized and mitigated to the maximum extent practicable. The U.S. Fish and Wildlife Service (USFWS) evaluated the effects of the Covered Activities in the Biological Opinion [file number] prepared for the decision to issue the incidental take permit and concluded that the Covered Activities were not likely to jeopardize the continued existence of the Covered Species. Based on the applicability of the HCP to the proposed action, we are requesting confirmation from the USFWS that the Section 7 obligations of [federal agency] are complete [*for federally listed Covered Species*] with respect to the proposed action.

Additionally, all effects on Covered and non-Covered Species from Covered Activities have been previously analyzed and effects from SDG&E's proposed project are consistent with those analyzed in the USFWS intra-service Biological Opinion prepared for the HCP Amendment.

## **Both Covered and Non-Covered Species (Not Likely to be Adversely Affected)**

Re: Informal Section 7 Consultation for [project name] in [project location]

Dear:

This letter serves as a request for initiation of informal Section 7 consultation for [project name]. The [federal agency] is processing a request from SDG&E to [access land/ discharge dredge or fill material into waters of the U.S. etc.] so that it may [describe Covered Activity]. The activity is a "Covered Activity" under the 2021 HCP Amendment and Section 10 incidental take permit issued to SDG&E on [date of permit issuance], and the way the activity is proposed to be carried out is consistent with the HCP.

The proposed action of [granting access/issuing a permit etc.] may affect the [species name]. The [species] is a "Covered Species" under the HCP and Section 10 permit, and SDG&E is authorized to incidentally take [species] as it undertakes Covered Activities. The proposed action may affect and is likely to adversely affect [species]. The HCP requires implementation of Operational Protocols so that the effects of Covered Activities on Covered Species are minimized and mitigated to the maximum extent practicable. The U.S. Fish and Wildlife Service (USFWS) evaluated the effects of the Covered Activities in the Biological Opinion [file number] prepared for the decision to issue the incidental take permit and concluded that the Covered Activities were not likely to jeopardize the continued existence of the Covered Species. Based on the applicability of the HCP to the proposed action, we are requesting confirmation from the Service that the Section 7 obligations of [federal agency] are complete for federally listed Covered Species with respect to the proposed action.

The proposed action also may affect [species name]. The [species] is not a Covered Species under the 2021 HCP Amendment. Implementation of the Covered Activity will include Operational Protocols identified in the 2021 HCP Amendment, which will minimize and mitigate effects to [species]. We request concurrence from the Service that the proposed action is not likely to adversely affect [species].

Additionally, all effects on Covered and non-Covered Species from Covered Activities have been previously analyzed and effects from SDG&E's proposed project are consistent with those analyzed in the USFWS intra-service Biological Opinion prepared for the HCP Amendment.

## **Both Covered and Non-Covered Species (Likely to be Adversely Affected)**

Re: Formal Section 7 Consultation for [project name] in [project location]

Dear:

This letter serves as a request for initiation of formal Section 7 consultation for [project name]. The [federal agency] is processing a request from SDG&E to [access land/ discharge dredge or fill material into waters of the U.S. etc.] so that it may [describe Covered Activity]. The activity is a "Covered Activity" under the HCP Amendment and Section 10 incidental take permit issued to SDG&E on [date of permit issuance], and the way the activity is proposed to be carried out is consistent with the HCP.

The proposed action of [granting access/issuing a permit etc.] may affect the [species name]. The [species] is a "Covered Species" under the HCP and Section 10 permit, and SDG&E is authorized to incidentally take [species] as it undertakes Covered Activities. The proposed action may affect and is likely to adversely affect [species]. The HCP requires implementation of Operational Protocols so that the effects of Covered Activities on Covered Species are minimized and mitigated to the maximum extent practicable. The U.S. Fish and Wildlife Service (USFWS) evaluated the effects of the Covered Activities in the Biological Opinion [file number] prepared for the decision to issue the incidental take permit and concluded that the Covered Activities were not likely to jeopardize the continued existence of the Covered Species. Based on the applicability of the HCP to the proposed action, we are requesting confirmation from the Service that the Section 7 obligations of [federal agency] are complete for federally listed Covered Species with respect to the proposed action.

The proposed action also may affect and is likely to adversely affect [species name]. The [species] is not a Covered Species under the HCP. Implementation of the Covered Activity will include the conservation measures identified in the HCP, which will minimize and mitigate effects to [species]. Enclosed is an assessment of effects likely to result to [species] because of implementation of the Covered Activity.

Additionally, all effects on Covered and non-Covered Species from Covered Activities have been previously analyzed and effects from SDG&E's proposed project are consistent with those analyzed in the USFWS intra-service Biological Opinion prepared for the HCP Amendment.

## **Nationwide Permit General Condition 18 Endangered Species**

(a) No activity is authorized under any Nationwide Permit (NWP) that is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP that “may affect” a listed species or critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. If pre-construction notification is required for the proposed activity, the federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA Section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under Section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-federal applicant of the U.S. Army Corps of Engineers’ (Corps) determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species or critical habitat, or until ESA Section 7 consultation has been completed. If the non-federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the USFWS or National Marine Fisheries Service (NMFS) the district engineer may add species-specific permit conditions to the NWPs.

Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(e) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the pre-construction notification required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA Section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA Section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA Section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA Section 7 consultation is required.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.