

9/25/98

## **Consultation Handbook--What we didn't catch...**

### Major

Page 3-18; Example of a non-concurrence letter---the example includes language referring to a conditional concurrence and offsetting adverse effects with beneficial effects such that a "net no effect" is determined and consultation is not needed.

Page 4-45; bullets of 3rd paragraph and 4th paragraph; discussion of incidental take---destruction of critical habitat is addressed in the context of take; the ESA does not include loss of critical habitat as a form of take.

Page 4-47; standard language for incidental take statement if listed plants are present---the paragraph states that only endangered plants receive limited protection under the ESA, whereas 17CFR Part 71 indicates that endangered and threatened plants receive limited protection.

Page 4-49; Effects of Take---this section repeatedly refers to "adverse modification of critical habitat" in the context of anticipated take from a proposed action; the ESA does not include loss of critical habitat as a form of take. The standard language on this page and Page 4-50 need to be edited to delete reference to "adverse modification" and "destruction or adverse modification of critical habitat."

Page 4-51; Terms and Conditions---the last paragraph states that incidental take must not result in "adverse modification" which is a reference to critical habitat; the ESA does not include loss of critical habitat as a form of take.

Page 6-7; standard language for Conference Opinions---the wording does not make the distinction between take of species and take of species measured by alteration of habitat; the wording suggests that the incidental take statement can be confined to loss of habitat

### Minor

Page 1-4; Signature Authority, Fish and Wildlife Service---the paragraph specifically mentions that Field Office supervisors can sign non-jeopardy biological opinions for intra-service consultations, but does not address that most biological opinions are non-jeopardy and interagency, and also signed by Field Office supervisors.

Page 1-6; Best available scientific and commercial data--- the last sentence of paragraph 2 should be deleted; it is also at the end of the next paragraph.

Page 2-10; Agencies that refuse to consult or confer---the last sentence is vague because there is not an example to demonstrate when such a position would be appropriate.

Page 4-26; Interrelated and interdependent actions---in the example at the bottom of the page, activities that have no independent utility "but for" the action under consultation are described as "interrelated" but at the top of the page "interdependent" activities are defined as those that have no independent utility apart from the action under consultation.

Page 4-44; 4th paragraph, discussion of Sweet Home court case---the phrase "adverse modification" is bolded, the court case did not talk about critical habitat but rather the definition of harm to include "significant" habitat modification.