

To: 'aurelia_skipwith@ios.doi.gov'[aurelia_skipwith@ios.doi.gov]
Cc: Sean Bell[Sean.Bell@res-group.com]
From: Theresa Carroll
Sent: 2018-07-30T16:45:36-04:00
Importance: Normal
Subject: [EXTERNAL] FW: Skookumchuck Question
Received: 2018-07-30T16:45:47-04:00

Hi Aurelia,

Here is the second email I mentioned. Also, after our call on Friday, I had a call with the Lacey Field Office, and we discussed a solution that might work for the project. I'm going to discuss further with them today, and I will let you know how that progresses. Perhaps we can come to a positive solution with the Field and Regional offices to keep from adding to your workload, and instead have a document that you can review in just a short time.

Thank you!
Theresa

Theresa Carroll
Director, Permitting, Americas

C 510 828 3714 | O 303 439 4200

theresa.carroll@res-group.com | <http://www.res-group.com>



From: Wahlberg, Brooke M.
Sent: Tuesday, July 10, 2018 9:50 PM
To: Bernstein, Jeffrey <jeff.bernstein@sol.doi.gov>
Subject: RE: Skookumchuck Question

Hi Jeff,

My answer would be that it's a separate question. There's specific language in the eagle rule related to which issuance criteria applies when seeking eagle coverage under an HCP. The eagle rule is silent with respect to no surprises and coverage under an HCP. Regardless, the "no surprises" rules should apply to the ESA species covered by the HCP (It's unclear from your question below whether you are questioning the applicability of no surprises as a blanket question or just specific to eagles). If the USFWS takes the position that no surprises rule would not extend to the eagle coverage, the eagle rule has other provisions very similar to no surprises that occurs in five-year increments. The eagle rule provision limits what the USFWS can request over the course of the five-year check-ins if the permittee remains within its eagle take limit, is in compliance with its permit, or if the adaptive management program prescribes a response. The HCP's monitoring and adaptive management program have been designed to align with the eagle rule framework. The relevant "eagle no surprises" language from the eagle rule is pasted below (I've added emphasis that gets to the heart of the provision) and should be applicable to the eagle authorization.

50 CFR 22.26(c)(iv)

Actions to be taken based on the permit review.

(A) In consultation with the permittee, the Service will update fatality predictions, authorized take levels and compensatory mitigation for future years, taking into account the observed levels of take based on approved protocols for monitoring and estimating total take, and, if applicable, accounting for changes in operations or permit conditions pursuant to the adaptive management measures specified in the permit or made pursuant to paragraphs (c)(7)(iv)(B) through (D) of this section.

(B) If authorized take levels for the period of review are exceeded in a manner or to a degree not addressed in the adaptive management conditions of the permit, based on the observed levels of take using approved protocols for monitoring and estimating total take, the Service may require additional actions including but not limited to:

- (1) Adding, removing, or adjusting avoidance, minimization, or compensatory mitigation measures;
- (2) Modifying adaptive management conditions;
- (3) Modifying monitoring requirements; and
- (4) Suspending or revoking the permit in accordance with part 13 of this subchapter B.

(C) If the observed levels of take, using approved protocols for monitoring and estimating total take, are below the authorized take levels for the period of review, the Service will proportionately revise the amount of compensatory mitigation required for the next period of review, including crediting excess compensatory mitigation already provided by applying it to the next period of review.

(D) Provided the permittee implements all required actions and remains compliant with the terms and conditions of the permit, no other action is required. However, with consent of the permittee, the Service may make additional changes to a permit, including appropriate modifications to avoidance and/or minimization measures or monitoring requirements. If measures are adopted that have been shown to be effective in reducing risk to eagles, appropriate adjustments will be made in fatality predictions, take estimates, and compensatory mitigation.

Hopefully that answers your question, but please feel free to reach out if it doesn't.

Thanks for continuing to look at this.

Brooke

From: Bernstein, Jeffrey <jeff.bernstein@sol.doi.gov>
Sent: Tuesday, July 10, 2018 12:11 PM
To: Wahlberg, Brooke M. <bwahlberg@nossaman.com>
Subject: Skookumchuck Question

Hi Brooke - I'm preparing for our call and I have a question. Does your client expect to get HCP no surprises assurances if it does not provide mitigation for bald eagles? Thanks - Jeff

Jeff Bernstein

Attorney-Advisor
U.S. Department of the Interior
Office of the Solicitor
503-231-2355

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