

# Introduction

This section provides background information for the reinitiation of consultation, a short description of how the assessment package is structured, and background information about how the milestones were developed.

**Reinitiation of Consultation.** On August 28, 2000, the Programmatic Record of Decision (ROD) for the CALFED Bay-Delta Program (CALFED Program) was signed by 13 Federal and State agencies with management and regulatory responsibilities in the San Francisco Bay and Sacramento-San Joaquin Delta Estuary (Bay-Delta). Based on the analysis in the Multi-Species Conservation Strategy (MSCS) and the Final Programmatic Environmental Impact Statement/Environmental Impact Report (Final PEIS/R), the CALFED agencies fulfilled the regulatory requirement for its programmatic evaluation of the CALFED Program, as set out under Section 7 of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 et. seq.) and under the Natural Community Conservation Planning Act (NCCPA) (California Fish and Game Code Section 2800, et. seq.). As a result of meeting these requirements, three regulatory documents were issued concurrently with the ROD: a programmatic biological and conference opinion (1-1-00F-184) by the U.S. Fish and Wildlife Service; a programmatic biological opinion (SWR-00-SA-0110-MEA) by the National Marine Fisheries Service; and a programmatic Natural Community Conservation Plan approval by the California Department of Fish and Game.

Eighteen Federal and State agencies signed the CALFED ROD. Collectively, these are called the CALFED agencies.

The federal agencies shared lead agency status for fulfilling the Section 7 regulatory requirements:

- Bureau of Reclamation (Reclamation)
- U.S. Fish and Wildlife Service (Service)
- Bureau of Land Management (BLM)
- U.S. Geological Survey (USGS)
- U.S. Army Corps of Engineers (Corps)
- U.S. Environmental Protection Agency (EPA)
- National Marine Fisheries Service (NMFS)
- Natural Resources Conservation Service (NRCS)
- U.S. Forest Service (USFS)
- Western Area Power Authority (WAPA)

The State of California's Resources Agency was an applicant for consultation purposes and represented:

- California Department of Fish and Game (CDFG)
- California Department of Water Resources (CDWR)
- The State Reclamation Board

All of the above agencies except for the USFS, WAPA and the State Reclamation Board also signed the Conservation Agreement for the MSCS.

These three regulatory documents addressed CALFED Program implementation, as it is described in the Final PEIS/R, its technical appendices including program plans and strategies, its implementation plan and Phase II Report. The Description of Proposed Action in the programmatic biological and conference opinions is based on the CALFED Program documents, provides clarifications derived from the PEIS/R, and is intended to provide a comprehensive description of the CALFED Program.

Several components of the CALFED Program are designed to further the ESA, the NCCPA, and the California Endangered Species Act (CESA). These components are an inseparable part of the CALFED Program, and include the Ecosystem Restoration Program (ERP), the Multi-Species Conservation Strategy (MSCS), the Water Quality Program<sup>1</sup>, a short-term Environmental Water

<sup>1</sup> The Water Quality Program as described in the PEIS/R subsequently was separated into the Drinking Water Quality Program and the Environmental Water Quality Program. The Environmental Water Quality Program is now part of the ERP.

Account (EWA) and its operating principles, and implementation strategies including monitoring and adaptive management. Since the ROD, the CALFED Program also developed a Science Program and a proposal for a long-term EWA as one component of an integrated set of actions called the Delta Improvements Package (DIP). Commitments by the CALFED agencies to uphold Federal and State listed species laws and to implement the many programs and commitments addressed in the ROD contributed to the Federal ESA decision-making process to reach a conclusion of no jeopardy or adverse modification of designated critical habitat for listed species. These commitments also contributed to the State's decision to approve the MSCS as a programmatic NCCP.

The programmatic biological opinions and the NCCPA approval contained a set of 119 "milestones." The milestones are a discrete set of actions intended to be carried out during the CALFED Program's Stage 1 (the first 7 years of the 30-year program). These actions are derived from the PEIS/R technical appendices including the MSCS and program plans for the ERP and Water Quality Program. The Service, NMFS, and CDFG developed the milestones to ensure that the MSCS, ERP and Water Quality Program are carried out in a manner and level adequate to sustain programmatic ESA, NCCPA, and CESA compliance for all CALFED Program elements.

In the CALFED Program ROD, the U.S. Fish and Wildlife Service (Service), National Marine Fisheries Service (NMFS), and the California Department of Fish and Game (CDFG) committed to reinitiating ESA Section 7 consultation no later than 180 days before September 30, 2004, to evaluate progress toward substantially implementing milestones and the efficacy of the EWA. (The reinitiation commitment can be found in the Conservation Agreement regarding the MSCS.) This commitment was reiterated in the Service's August 2000 biological opinion as a reinitiation statement.

This document and associated appendices constitute the "assessment package" by which reinitiation of consultation is to occur. As described in the Conservation Agreement regarding the MSCS, reinitiation of consultation is expected to result in supplemental biological opinions, which could be appended to the original biological opinions. Amendments to former biological opinions may also be an appropriate outcome of this effort. CDFG also may amend its NCCP approval of the MSCS based upon the outcome of this assessment. This consultation is unique in that the CALFED agencies are not proposing a new action. Instead, this evaluation serves as the measure by which the CALFED agencies' commitments in making progress toward substantially implementing milestones and EWA can be assessed and confirmed through the consultation process. Because the proposed action has not changed from that contained in the ROD, it is incorporated by reference and is not repeated in this document.

This assessment package represents a "snap-shot-in-time" on the continuum of the restoration and environmental compliance efforts by the CALFED agencies as they implement their respective programs. Review and assessment of ecosystem restoration and environmental compliance efforts as they relate to substantially implementing the milestones is and will continue to be an ongoing effort for the ERP. This assessment package does not assess or speculate about the outcome of the efforts listed, nor is it an assessment of the overall CALFED Program itself. The focus of this package is to evaluate the efficacy of EWA and assess the progress being made in substantially implementing the 119 milestones as listed in the ROD during the first four years of Stage 1.

## Organization of the Assessment Package

There are three major parts to this assessment package. The first part is the actual assessment, which is presented in six sections. The other two parts are the appendices, each bound separately.

**Section 1: Status of CALFED Program Elements.** This section provides a brief status of all CALFED Program elements; this status report is important because the August 2000 consultation addressed in a comprehensive manner the numerous and widely-varied actions related to CALFED Program implementation. As described in the PEIS/R, CALFED Program actions are interrelated and interdependent, and many actions carried out by the CALFED agencies were not and should not be considered as stand alone actions; therefore, to facilitate ESA compliance, CALFED activities originally were evaluated as a suite of actions. The August 2000 biological and conference opinions and NCCP Approval addressed the effects of this suite of actions on listed species and provided a strategy for ESA and NCCPA compliance on the individual activities that cumulatively comprise the CALFED Program. The PEIS/R focused on eight CALFED Program elements: ERP, Levee System Integrity, Water Quality, Water Use Efficiency, Water Transfers, Storage, Conveyance, and Watershed. Since the PEIS/R was written, the EWA, Water Supply Reliability, and Science programs were added to the list of CALFED Program elements, bringing the number of program elements to 11.

**Section 2: Assessment Review Process.** This section describes the process used to review each milestone for this assessment. Efforts reviewed included those by the CALFED Program through its Ecosystem Restoration, Water Quality and Watershed program elements, the Central Valley Project Improvement Act's Anadromous Fish Restoration Program, and a review of efforts by other entities such as the California Department of Water Resources or non-governmental organizations like The Nature Conservancy.

**Section 3: Summary Synthesis by ERP Region.** This section provides a summary synthesis of milestone achievements to-date in the ERP regions. The ERP regions are the Delta and Eastside Tributaries Region, the Suisun Marsh and North San Francisco Bay Region, the Sacramento River Basin Region, and the San Joaquin River Basin Region. A fifth set of milestones, "Research Milestones," is not limited to regional boundaries and applies to research efforts that have multi-regional benefit and application. The MSCS focus area parameters do not coincide with the ERP regional boundaries, but there are many similarities. The regional summaries include a statement of status, progress, and next steps to continue milestone achievements.

**Section 4: Regional Ecosystem Restoration Implementation Planning and Adaptive Management.** This section contains background information regarding the other CALFED Program documents that guide ecosystem restoration and describe the adaptive management process. This section also includes a brief discussion of how ERP-related targets may be revised and about the scientific review process developed through the ERP's regional implementation planning process that may be applied to milestone review.

**Section 5: Efficacy of the Environmental Water Account (EWA).** The Environmental Water Account (EWA), one of the tools within the CALFED Water Management Strategy, was established to provide water for the protection and recovery of at-risk fish species beyond water available through

existing regulatory actions related to the operations of the State Water Project (SWP) and the Central Valley Project (CVP) (CALFED 2000). This section summarizes EWA operation for the past three years and the effects of the EWA on targeted species.

**Section 6: Report Summary.** This section contains an overview summary of the conclusions, findings or recommendations that are the result of this assessment.

**Appendix A: Multi-Species Conservation Strategy Milestone Progress Summaries and Project Linkages.** This appendix documents the evaluation of individual CALFED Program and CVPIA-funded projects reviewed to formulate the summary for each milestone. The Appendix A summaries were critical first steps to developing the summary synthesis found in Section 3 of the assessment package. Appendix A is bound separately from the assessment package.

**Appendix B: Evaluated Project Descriptions and Multi-Species Conservation Strategy Milestones Linkages.** This appendix focuses on describing the CALFED Program and CVPIA-funded projects by objective and task, and then linking the project to one or more of the milestones, if appropriate. Appendix B provides a project-focused way of looking at the milestones, and was structured to provide more detailed project information to supplement the assessment package. Appendix B also is bound separately from the assessment package.

## Background of MSCS-ERP Milestones

The CALFED Program's objectives for ecosystem restoration are to improve and increase aquatic and terrestrial habitats and improve ecological functions in the Bay-Delta to support sustainable populations of diverse plant and animal species. The ERP is the principal CALFED Program element designed to meet these objectives and the Ecosystem Restoration Program Plan (ERPP) is the CALFED Program's blueprint for restoring the Bay-Delta. The MSCS was developed as the foundation for compliance with the ESA, CESA and NCCPA. The programmatic Federal biological opinions and CDFG's NCCP determination (programmatic determinations, collectively) established MSCS-ERP milestones (milestones) as integral to ensuring that the CALFED Program was implemented in a manner to provide for species and habitat conservation.

**What are Milestones?** The milestones are a list of actions that serve as reference points for determining whether the CALFED Program is moving toward substantially implementing its ecological and species-specific objectives, and is developing the information needed to move the CALFED Program into Stage 2 implementation. The milestones are directly linked to the assurances between the regulatory agencies and the regulated community that the CALFED Program will be implemented in a manner that is consistent with the programmatic determinations.

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**Milestone** (n). 1. A stone marker set up on a roadside to indicate the distance in miles from a given point. 2. An important event, as in a person's career, the history of a nation, or the advancement of knowledge in a field; a turning point.

*The American Heritage Dictionary, 4<sup>th</sup> Edition*

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The MSCS and milestones are not separate blueprints or supplemental restoration programs and do not supplant the ERP. However, the MSCS and milestones are a conservation and regulatory compliance strategy affecting the entire CALFED Program. The MSCS addresses the potential

adverse effects and beneficial effects of all CALFED Program actions. When the milestones were written in August 2000, the Service, NMFS, and CDFG used the best available, scientific information on the critical needs of at-risk species to develop the milestones.

**Milestone Selection.** The Service, NMFS, and CDFG reviewed the 600-plus programmatic actions and related targets described in the ERPP and identified a subset of those actions and targets as high priority because these would benefit at-risk species, designated as “R” and “r” species in the MSCS and listed in the Strategic Plan for Ecosystem Restoration (ERPP, Volume II). In determining which programmatic action or target would serve as a milestone, these agencies considered current status, habitat requirements and life history of each “R” and “r” species and evaluated proposed actions for their potential to provide substantial benefits to these species. Once the 119 milestones were agreed to, these were incorporated into the programmatic determinations.

**Potential Milestone Revisions.** As CALFED agencies implement their projects, it is expected that the milestones may need to be modified as a result of the adaptive management process. The adaptive management approach means that as effects of projects or results of studies become known, evaluation regarding future actions may change. A scientific review of the milestones will take place as part of writing the regional ecosystem restoration implementation plans (see Section 4). Called the “vetting process,” this scientific review is needed to determine the scientific viability of the milestone and suggest ways this milestone can be substantially implemented that is consistent with achievable science-based objectives. The review should clarify approaches to substantially implement a milestone while recognizing the uncertainties that substantially implementing the milestones may not result in achieving ERP goals.

New information developed by the Science Program or other entities also may suggest that some milestones be revised. If the Service, NMFS, and CDFG determine that proposed revisions are warranted and are consistent with the ESA and NCCPA, the milestones will be revised accordingly. Revisions to the milestones would not be allowed if those revisions caused or allowed an adverse effect to covered species or critical habitat that was not considered under the programmatic determinations. The Service and NMFS expect that approved revisions to the milestones can be incorporated in each agency’s programmatic biological opinions without re-initiating formal consultation under Section 7 of ESA. CDFG can incorporate its approved revisions to the milestones by amending its Programmatic NCCPA Approval of the CALFED Program.