

6.3 Regulatory Assurances and Changed Circumstances and Unforeseen Circumstances

6.3.1 Regulatory Assurances

ESA regulations and provisions of the NCCPA each provide for regulatory and economic assurances to parties covered by approved HCPs and/or NCCPs concerning their financial obligations under a plan. Specifically, these assurances are intended to provide a degree of certainty regarding the overall costs associated with species mitigation and other conservation measures, and add durability and reliability to agreements reached between permittees and the fish and wildlife agencies. That is, if unforeseen circumstances occur that adversely affect species covered by an HCP or NCCP, the fish and wildlife agencies will not require additional land, water, or financial compensation or impose additional restrictions on the use of land, water, or other natural resources.

The assurances provided under the ESA and the NCCPA do not limit or constrain USFWS, NMFS, or DFG, or any other public agency, from taking additional actions to protect or conserve species covered by an NCCP and/or HCP. The State and federal agencies may use the variety of tools at their disposal and take actions to reduce the effects of other stressors to ensure that the needs of species affected by unforeseen events are adequately addressed.

6.3.1.1 Regulatory Assurances under the ESA - The No Surprises Rule

Under the No Surprises rule,¹ once an incidental take permit has been issued pursuant to an HCP, and its terms and conditions are being fully implemented, the federal government will not require additional conservation or mitigation measures, including land, water (including quantity and timing of delivery), money, or restrictions on the use of those resources.² If the status of a species addressed under an HCP unexpectedly declines, the primary obligation for undertaking additional conservation measures rests with the federal government, other government agencies, or other non-federal landowners who have not yet developed HCPs. As explained by the federal fish and wildlife agencies:

Once an HCP permit has been issued and its terms and conditions are being fully complied with, the permittee may remain secure regarding the agreed upon cost of conservation and mitigation. If the status of a species addressed under an HCP unexpectedly worsens because of unforeseen circumstances, the primary obligation for implementing additional conservation measures would be the responsibility of the Federal government, other government agencies, and other non-Federal landowners who have not yet developed an HCP.”³

¹ *Id.*

² The No Surprises rule was promulgated jointly by the Department of the Interior (Service) and the Department of Commerce (National Marine Fisheries Service).

³ 63 FR at 8867.

1 *However, the federal fish and wildlife agencies may, in the event of unforeseen circumstances, require*
2 *additional measures provided they are limited to modifications within conserved habitat areas or to*
3 *the conservation plan's operating conservation program for the affected species, and that these*
4 *measures do not involve additional financial commitments or resource restrictions without the consent*
5 *of the permittee. These assurances are provided to all HCP permittees that properly implement their*
6 *plans. However, they are not available to federal agencies. As such, the Bureau of Reclamation, which*
7 *will use the BDCP as the basis for biological assessments (BA) to support the issuance of take*
8 *authorizations from USFWS and NMFS pursuant to section 7 of the ESA for its actions in the Delta,*
9 *will not be covered by the No Surprises rule.*

11 *The assurances provided by the No Surprises rule, however, are not absolute and are tempered by*
12 *other regulatory provisions of the ESA. The "Permit Revocation" rule moderates the scope of the No*
13 *Surprises rule, providing that in instances where a species covered by an HCP is threatened with*
14 *extinction, assurances may be nullified and USFWS and/or NMFS may revoke the HCP permit.⁴ The*
15 *federal fish and wildlife agencies may exercise this authority even if a permittee is in compliance with*
16 *the terms and conditions of the permit, provided the permitted activity would appreciably reduce the*
17 *likelihood of the survival and recovery of the species in the wild.⁵*

18 *[Note to Reviewers: Additional text will be added regarding the application of the No Surprises rule*
19 *to the various BDCP authorized entities]*

21 **6.3.1.2 Regulatory Assurances under the NCCPA**

23 *Under the NCCPA, DFG provides assurances to permittees commensurate with the long-term*
24 *conservation measures and associated actions that will be implemented under the plan. In its*
25 *determination of the level and term of the assurances to be afforded a permittee, DFG takes into*
26 *account the conditions specific to the plan, including such factors as: the level and quality of*
27 *information regarding covered species and natural communities, the sufficiency and use of the best*
28 *available scientific information in the analysis of impacts on these resources, reliability of mitigation*
29 *strategies, and appropriateness of monitoring techniques, including the use of centralized information*
30 *to evaluate the effectiveness of the plan; the adequacy of funding assurances; the range of foreseeable*
31 *circumstances that are addressed by the plan; and the size and duration of the plan.⁶*

33 *The assurances provided by DFG pursuant to the NCCPA to the BDCP applicable permittees will, at a*
34 *minimum, ensure that if there are unforeseen circumstances, no additional financial obligations or*
35 *restrictions on the use of resources will be required of the permittees without their consent.*
36 *Specifically, the NCCPA directs that, "If there are unforeseen circumstances, additional land, water,*
37 *or financial compensation or additional restrictions on the use of land, water, or other natural*
38 *resources shall not be required without the consent of plan participants for a period of time specified*
39 *in the implementation agreement, unless [DFG] determines that the plan is not being implemented*
40 *consistent with the substantive terms of the implementation agreement." However, like the provision*

⁴ 50 C.F.R. § 17.22(b)(8) [CHECK NMFS REGS]

⁵ 69 Fed. Reg. 71723, 71727 (December 10, 2004).

⁶ DFG bases its determination of the level of assurances on multiple factors. See Fish and Game Code section 2820(f).

1 of ESA regulation, the NCCPA requires that DFG suspend or revoke a permit, in whole or in part, if
2 the continued take of a covered species would jeopardize its continued existence.

3 **6.3.2 Changed Circumstances**

4 Ecological conditions in the Delta are likely to change as a result of future events and circumstances
5 that may occur during the course of the implementation of the BDCP. The BDCP identifies changes in
6 circumstances that are reasonably foreseeable and that could adversely affect species and natural
7 communities covered by the plan, consistent with the “changed circumstances” provisions of ESA
8 regulations and in the NCCPA.⁷ To ensure successful implementation of the BDCP conservation
9 strategy, the plan further sets out measures designed to respond to these anticipated future changes.

10
11 The changed circumstances provisions of the BDCP are intended to address reasonably foreseeable
12 events, both inside and outside of the Delta, that may impede or prevent the BDCP from achieving its
13 biological goals and objectives within the Plan Area. The BDCP identifies a broad range of potential
14 changed circumstances, including events or conditions that may cause population-level declines in
15 covered species, such as new invasive species and significant releases of pollutants, or that may
16 substantially degrade habitat functions, such as flooding and climate change.

17 Responses to the changed circumstances provided for in the BDCP will largely be developed and
18 implemented as part of the adaptive management program.⁸ For certain specified changed
19 circumstances, measures beyond the scope of the adaptive management program have been developed,
20 as described in this section. The responsive measures set out in the plan reflect approaches that are
21 both practicable and roughly proportional to the impacts of covered activities on covered species and
22 habitat.

23 Changed circumstances provisions are not intended to remedy events or conditions that are beyond the
24 control of the permittees. Rather, these provisions are intended to protect the plan’s operating
25 conservation program in the face of such events. Thus, for example, in the event of changes in water
26 temperatures in the Delta, the BDCP would not provide for actions to moderate such temperature
27 changes. The BDCP, however, would require that the Management Entity implement responsive
28 actions or contingency plans that provide for a recalibration of habitat restoration strategies or other
29 actions within the context of the defined range of the adaptive management program.. Similarly, an
30 occurrence of a major flood event that results in substantial loss of tidal marsh habitat restored under
31 the BDCP would trigger actions under the adaptive management program to restore functions of tidal
32 marsh habitat for covered species.

33 To address the potential for changed circumstances, the BDCP sets out funding commitments for
34 remedial measures that may be implemented as part of the adaptive management program. The BDCP
35 also identifies contingency funding to implement measures to address those changed circumstances not
36 contemplated in the adaptive management program, as described in X.X. In the event that changed
37 circumstances occur, the Management Entity will implement the remedial measures identified in this
38 chapter. However, the BDCP sets out the range of financial commitments of the participating entities,

⁷ USFWS and NMFS regulations define changed circumstances as “changes in circumstances affecting a species or geographic area covered by a conservation plan that can reasonably be anticipated by plan developers and the [USFWS and NMFS] and that can be planned for...” (50 C.F.R. §17.3; 50 C.F.R §222.102). The NCCP Act defines changed circumstances as “...reasonably foreseeable circumstances that could affect a covered species or geographic area covered by the plan.” (Fish and Game Code §2805(c)).

⁸ See generally, U.S. Fish and Wildlife Service and National Marine Fisheries Service Habitat Conservation Planning Handbook, page 3-28 (November 1996).

1 which includes limitations on funding to remediate changed circumstances. As such, remedial
2 measures for changed circumstances will be implemented within the levels of funding set out in the
3 BDCP for these purposes.

4 In the event of such changed circumstances, the BDCP Management Entity would implement the
5 responsive measures described in this chapter. The following describes the process for identifying
6 the occurrence of changed circumstances, the changed circumstances that would be addressed by the
7 BDCP, and the measures that would be implemented in response to such occurrences.

8 9 **6.3.2.1 Process to Identify Changed Circumstances**

10
11 For changed circumstances that are anticipated in the BDCP, the Management Entity, in conjunction
12 with the fish and wildlife agencies, will develop thresholds and triggers as part of the adaptive
13 management program that will be used to signal the onset of changed circumstances. The occurrence
14 of a changed circumstance will generally become apparent to the Management Entity through
15 information gained from systems or effectiveness monitoring, scientific study, or by notification
16 received from another party (e.g., a levee failure reported by a reclamation district). Upon an
17 indication that a changed circumstance has occurred, or is likely to occur, the Management Entity will
18 take immediate steps to investigate and confirm the occurrence of such an event. If a changed
19 circumstance appears to have occurred, the Management Entity will contact the appropriate fish and
20 wildlife agencies to confirm the changed circumstance. The Management Entity will notify the BDCP
21 Authorized Entities, relevant Supporting Entities, and the Implementation Council of the changed
22 circumstance.

23
24 After establishing an occurrence of a changed circumstance identified in this chapter, the Management
25 Entity, in coordination with the Fishery Agencies, will determine specific remedial actions that are
26 consistent with the responses described in Section 6.3.2.2 for the particular changed circumstance and
27 develop a schedule for implementation. For those actions that are to be implemented through the
28 adaptive management program, the decision-making process described in Section 3.6, *Adaptive*
29 *Management*, will be used. For other responsive actions, the Management Entity will implement the
30 identified measures after conferring with the relevant fish and wildlife agencies. After implementing
31 remedial actions, the Management Entity will monitor the effectiveness of the measures and report the
32 associated results and findings.

33 34 **6.3.2.1 Changed Circumstances Addressed by the BDCP**

35 36 **1. Availability of Land for Habitat Restoration**

37
38 During the course of BDCP implementation, the Management Entity may determine that land suitable
39 for restoration of habitat is not available in sufficient quantities or appropriate locations to meet the
40 habitat restoration targets. In such instances, the Management Entity, through the adaptive
41 management process, will identify lands within other ROAs suitable for like-kind habitat restoration
42 and will restore those lands at levels sufficient to make up the shortfall in meeting the habitat
43 restoration targets. Alternative sites must be in locations and possess those features sufficient to
44 produce benefits to covered species substantially similar to those that were expected from such actions
45 in the original ROA. If appropriate restoration sites are not available in any of the ROAs, the
46 Management Entity, through the adaptive management process and with the approval of the Fish and
47 Wildlife Agencies, will: (a) undertake restoration of habitat in areas outside of the designated ROAs at

1 locations that would benefit the associated covered species, (b) restore habitat in suitable locations
2 outside of the Plan Area, in coordination with local governments engaged in regional conservation
3 planning efforts, to benefit the associated covered species, or (c) identify and implement alternative
4 conservation measures that provide equivalent or greater benefits to the affected covered species.
5

6 **2. Levee and Dike Failures**

7

8 *Failure of levees constructed as part of a BDCP activity result in substantial reduction of the level of*
9 *benefits to covered species produced by restored tidal marsh*

10
11 The BDCP Management Entity will repair levees constructed pursuant to a BDCP activity that
12 subsequently fail and will undertake actions to restore the functions of habitat degraded or lost as a
13 result of the failure. If such restoration of habitat is not practicable, the BDCP Management Entity
14 will, through the adaptive management process, restore habitat of comparable biological value
15 elsewhere in the Plan Area or at other locations as provided for under Changed Circumstance 1 to
16 replace lost or degraded habitat functions.
17

18 *Failure of levees not constructed as part of a BDCP activity reduces the benefits to covered species*
19 *produced by restored tidal marsh*

20
21 In the event of a failure of a levee not constructed as part of a BDCP action, the entity with jurisdiction
22 and responsibility for the levee will be expected to make all necessary repairs. Following repair of the
23 levee, the BDCP Management Entity will, to the extent practicable, identify and undertake actions
24 through the adaptive management process to restore the degraded or lost habitat. The Management
25 Entity will seek to obtain funding from the party responsible for the levee failure for the actions
26 necessary to restore habitat functions provided by the tidal marsh.
27

28 *Failure of levees unrelated to BDCP actions that inhibit implementation of water operations conservation*
29 *measures or reduce the covered species and ecosystem benefits that would result from such conservation*
30 *measures*

31
32 In the event of a levee failure that affects the implementation of water operations conservation
33 measures, the Management Entity will direct, in coordination with the Authorized Entities and the
34 “Fishmaster”, adjustments to water operations, on a temporary basis and within the established adaptive range of
35 water operations, necessary to minimize adverse effects of the levee failure(s) on covered species. Operations
36 will return to pre-levee failure operations once the circumstances affecting the implementation of the
37 conservation has been remedied.
38

39 *Failures of levees unrelated to BDCP activities that are not repaired by the responsible flood control entity and*
40 *inhibit the implementation of water operations conservation measures or reduce the covered species and*
41 *ecosystem benefits that would be provided by the conservation measure*

42
43 Should a levee failure occur with no subsequent repair, the BDCP Management Entity will, through the adaptive
44 management process and subject to the specific circumstances of the event, implement one or more of the
45 following actions to obtain the intended benefits of water operations conservation measures precluded by levee
46 failures: (a) adjust water operations within the permitted adaptive range of water operations to restore benefits
47 to covered species and habitat provided by the measures, to the extent practicable or (b) identify and implement
48 alternative conservation measures (e.g., additional restoration of physical covered fish species habitats, increase
49 in magnitude of other stressors conservation measures) that will provide similar types and levels of covered
50 species benefits intended by the affected conservation measures.

1
2 *Failure of multiple Delta levees substantially alter aquatic conditions such that conservation measures*
3 *cannot be implemented and/or the covered species habitat benefits provided by conservation measures*
4 *are substantially reduced as a result of altered aquatic ecosystem conditions or changes in the*
5 *behavior or distribution of covered fish species*

6
7 A widespread or catastrophic change in ecological conditions within the Plan Area due to multiple
8 levee failures would be at such magnitude so as to render most responses through the BDCP infeasible.
9 However, the Management Entity, through the adaptive management program, will seek to identify
10 measures to moderate the effects of such an event within the parameters of the adaptive range.

11 12 **3. Failure of water operations infrastructure**

13
14 *Failure of water operations infrastructure necessitates that management of water operations deviate*
15 *from the BDCP conservation measures and the defined adaptive ranges set out in the conservation*
16 *strategy.*

17
18 In response to failures of infrastructure that requires changes in operations that are outside the
19 parameters of the BDCP, the Management Entity will request that DWR and/or Reclamation repair the
20 affected facilities or make adjustments or modifications to other facilities to restore full operational
21 capacity, as soon as feasible, and temporarily adjust water operations within the permitted adaptive
22 range of water operations if necessary to minimize adverse effects of the facility failure(s) on covered
23 species. Upon completion of facility repairs or alternative modifications to other infrastructure,
24 operations would return to routine levels and parameters.

25
26 If the infrastructure failure does not permit operations within the adaptive management range the
27 Management Entity will operate under the emergency procedures described in Chapter 3, *Conservation*
28 *Strategy.*

29
30 [Note to Reviewers: emergency provisions will be developed for chapter 3]

31 32 **4. Wildfires**

33
34 The BDCP will address the effects of wildfires that substantially alter the extent of plant communities
35 within areas protected, enhanced, and/or restored as a result of BDCP actions, such that expected
36 benefits to covered species are significantly reduced. The BDCP Management Entity will, through the
37 adaptive management program, identify and implement management actions sufficient to reestablish
38 intended habitat functions of the affected natural communities.

39 40 **5. Conflicts Related to State or federal environmental laws or regulation**

41
42 In the event that it is determined that the implementation of a conservation measure would conflict
43 with a State or federal environmental law or regulation, the Management Entity will pursue one or
44 more of the following actions through the adaptive management process: (a) modify implementation
45 of the conservation measures to ensure compliance with all applicable State and/or federal laws or
46 regulations; (b) identify and implement alternative conservation measures that provide equivalent
47 ecological benefits for the affected covered species. In the alternative, the Management Entity may

1 also sufficiently reconcile the apparent regulatory conflict in conjunctions with the relevant State
2 and/or federal agency and proceed with the implementation of the conservation measure(s).

3 4 **6. New Species Listings**

5
6 *Listing of a BDCP covered species under the ESA or CESA occurs during the implementation of the*
7 *plan.*

8
9 Consistent with 63 FR 35 (February 23, 1998), USFWS and NMFS will automatically authorize take of newly
10 listed covered species under their respective jurisdictions. [ADD TEXT AND NEW CITATIONS] Consistent
11 with Fish and Game Code §2805(c) and §2835, DFG will automatically authorize take of newly listed covered
12 species.

13
14 *Listing of a species not covered by the BDCP under the ESA or CESA occurs during the implementation of*
15 *the plan.*

16
17 The Management Entity will evaluate the potential for incidental take of a species proposed for listing
18 or designated as a candidate for listing related to the implementation of the covered activities and will
19 assess the degree to which the species benefits the existing conservation measures. Following the
20 assessment, the Management Entity will identify any additional measures necessary to protect any such
21 species and engage, as appropriate, in the regulatory processes necessary to add such species to the
22 BDCP incidental take permits and authorizations.

23 24 **7. Invasive Species**

25
26 *Introduction of new, invasive non-native species diminishes benefits to covered species produced by*
27 *conservation measures related to habitat restoration.*

28
29 The BDCP Management Entity, through the adaptive management process, will identify and
30 implement measures to reduce and/or control the adverse effects of new non-native species on the
31 functions provided by habitat restored under the plan (e.g., control of non-native plant species in
32 restored tidal marsh that affect food web functions). If methods to adequately reduce and/or control
33 adverse effects of the non-native species are not available or practicable, the Management Entity will
34 identify alternate design, implementation, and management approaches to future habitat restoration
35 actions to avoid or minimize potential adverse effects of the invasive species on covered species. If
36 such modifications are not practicable, the Management Entity, through the adaptive management
37 process, will identify and implement conservation measures that provide equivalent levels of benefit to
38 applicable covered species.

39
40 *Introduction of a new, invasive non-native species diminishes benefits to covered species provided by*
41 *conservation measures related to water operations or other stressors.*

42
43 The BDCP Management Entity, through the adaptive management process, will identify and
44 implement measures to reduce and/or control adverse effects of a new non-native species on the
45 beneficial outcomes associated with water operations or other stressors conservation measures. If
46 methods are not practicably available to reduce and/or control such effects, the BDCP Management
47 Entity, within defined adaptive management ranges, will identify and implement alternative
48 conservation measures that provide equivalent or greater benefits to covered species and their habitats.
49

8. Toxic or Hazardous Spills

The BDCP will address toxic or hazardous spill events that occur in habitat areas that have been protected, enhanced, or restored through BDCP actions. For a spill event that is caused by a BDCP action, the BDCP Management Entity will identify and undertake management measures sufficient to remediate the effects of the toxic substance on covered species and affected habitats (i.e., removal or isolation of the material) and restore the ecological functions of the degraded habitat. If the affected habitat areas cannot be feasibly and effectively restored, the Management Entity, through the adaptive management process, will identify and implement measures to contain the ecological effects of the spill and either compensate for the loss of habitat functions at other locations or implement alternative conservation measures (e.g., expanded or additional contaminant reduction measures) that provide equivalent or greater ecological benefits to the affected covered species.

If the spill event is not caused by a BDCP action, the BDCP Management Entity, in coordination with responsible regulatory agencies, will identify for the party(ies) responsible for the spill event and the measures it will need to fund and/or undertake to adequately remediate the effects of the spill and restore the ecological functions of the affected habitat. The Management Entity will ensure that any such remediation and restoration actions are conducted in an appropriate manner.

9. Climate Change

During the course of the implementation of the BDCP, the Management Entity may ascertain that the effects of climate change on sea level and watershed hydrology are of greater magnitude or significance than was assumed during the development of the BDCP conservation strategy, such that conservation measures cannot be implemented or such measures would be unlikely to yield significant benefit to covered species or natural communities (e.g., climate change conditions affect availability of suitable restoration sites).

To the extent that actions can be undertaken through the parameters of the adaptive management program that would help to moderate the ecological effects of these hydrological changes, the BDCP Management Entity will identify and implement such measures. Such adaptive management responses may include expanding the range of environmental gradients to provide for shifting species distributions and habitats.

10. Water Temperature Changes

Water temperature may change within the Plan Area to levels that exceed the tolerance of one or more covered fish species, such that one or more of the following conditions occur: (a) a covered fish species no longer inhabits BDCP restored habitats; (b) a covered fish species no longer inhabits the Plan Area; (c) a covered fish species no longer accrues benefits from BDCP water operations, habitat restoration, or other stressors conservation measures; and/or (d) a covered fish species' population demonstrates a sustained downward trend in abundance.

Significant changes in water temperature within the Plan Area would likely have widespread, catastrophic impacts on ecological conditions within the Delta. As such, the effects of water temperature changes would be of such magnitude as to render any response through the BDCP infeasible. To the extent that actions can be undertaken within the parameters of the BDCP adaptive management program that would help to moderate the ecological effects of these temperature changes,

1 the BDCP Management Entity would identify and implement such measures. For instance, such
2 adaptive management responses may include identifying alternative locations for habitat restoration
3 actions.

4 5 **11. Changes in Ocean Conditions**

6
7 Changes may occur in ocean conditions that preclude achieving biological goals and objectives for
8 covered anadromous fish species within the Plan Area. Adverse effects on covered species and their
9 habitats resulting from changed ocean conditions on covered species, however, would not be addressed
10 by the BDCP. Events that affect ocean conditions or actions to remedy those effects are neither under
11 the control of nor the responsibility of the Management Entity or the Authorized Entities.

12
13 Significant changes in ocean conditions would have widespread, catastrophic impacts on ecological
14 conditions within the Delta. To the extent that actions can be undertaken within the parameters of the
15 BDCP adaptive management program that would help to moderate the ecological effects of these
16 changes in ocean conditions, the BDCP Management Entity would identify and implement such
17 measures. Such adaptive management responses may include identifying alternative locations for
18 habitat restoration actions.

19 20 21 **12. Changes in Precipitation and Temperature**

22
23 Changes in precipitation and temperature patterns may affect vegetation composition and structure of
24 BDCP protected, enhanced, and restored habitat areas. Within the defined range of the adaptive
25 management program, the BDCP Management Entity will identify and implement management actions
26 to maintain the intended habitat functions of affected habitat areas.

27 28 **6.3.3 Unforeseen Circumstances**

29
30 *Unforeseen circumstances are changes in circumstances affecting a species or geographic area
31 covered by an HCP that could not reasonably have been anticipated by the plan participants during
32 the development of the conservation plan, and that result in a substantial and adverse change in the
33 status of a covered species.⁹ Under ESA regulations, if unforeseen circumstances arise during the life
34 of the BDCP, USFWS and/or NMFS may not require the commitment of additional land or financial
35 compensation, or additional restrictions on the use of land, water, or other natural resources other
36 than those agreed to in the Plan, unless the BDCP permittees consent.*

37 *Within these constraints, USFWS and/or NMFS may require additional measures, but only if: (1) the
38 agencies prove an unforeseen circumstance exists; (2) such measures are limited to modifications of
39 the BDCP's operating conservation program for the affected species; (3) the original terms of the Plan
40 are maintained to the maximum extent practicable; and (4) the overall cost of implementing the BDCP
41 is not increased by the modification. USFWS and/or NMFS bear the burden of demonstrating that
42 unforeseen circumstances exist. A finding of unforeseen circumstances must be clearly documented,
43 based upon the best available scientific and commercial information and made considering certain*

⁹ 50 C.F.R. §17.3; 50 C.F.R. §222.102

1 *specific factors.*¹⁰ *If such a finding is made and additional measures are required, the BDCP*
2 *permittees will work with USFWS and/or NMFS to appropriately redirect resources to address the*
3 *unforeseen circumstances.*

4
5 [**Note to Reviewers:** This chapter will also include such topics as: modifications and major and minor
6 amendments to the BDCP; enforcement, permit suspension and revocation procedures; transferability;
7 relationship to other ESA policies and requirements, including future section 7 consultations,
8 designation of critical habitat, and adoption of recovery plans]

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¹⁰ These factors include the following: (1) Size of the current range of the affected species; (2) Percentage of range adversely affected by the conservation plan; (3) Percentage of range conserved by the conservation plan; (4) Ecological significance of that portion of the range affected by the conservation plan; (5) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the conservation plan; and (6) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild. 50 C.F.R. §17.22(b)(5)(iii)(C); 50 C.F.R. §222.307(g)(3)(iii).