

Consultation History

The history of section 7 consultation on long-term operations of the CVP and SWP began in the early 1990's. Biological Opinions were issued by the Service in March 1995 and July 2004, a reinitiation of the 2004 BiOp in February 2005, and the most recent BiOp was from December 2008. The consultation history up until December 2008 is hereby incorporated by reference from the December 15, 2008 *Formal Endangered Species Act Consultation on the Proposed Coordinated Operations of the Central Valley Project (CVP) and State Water Project (SWP)* (2008 BiOp). Additionally, the Service participated in Long-term Operations Biological Opinions (LOBO) Biennial Science Reviews, CSAMP/CAMT, Remand, FRP, FAST, and real-time operations meetings, too numerous to include in the itemized Consultation History, since the issuance of the 2008 BiOp.

The following is the Consultation History of long-term operations of the CVP and SWP since the 2008 BiOp was issued:

February 13, 2009: Reclamation requested reinitiation of consultation on the 2008 Service BiOp to temporarily modify D-1641 based on the forecast of a critically dry water year.

February 17, 2009: The Service responded to Reclamation's that the proposed temporary modification to D-1641 is within the range of effects analyzed in the 2008 Service BiOp.

March 3, 2009: The Westlands Water District, San Luis and Delta Mendota Water Authority, DWR, Metropolitan Water District of Southern California, Kern County Water Agency, and a number of other water agencies and other entities filed a complaint in the U.S. District Court of the Eastern District of California (District Court) seeking to have the court set aside the 2008 BiOp.

December 14, 2010: The District Court issued a decision on motions for summary judgment, finding the 2008 BiOp unlawful and remanding it to the Service for further consideration.

May 4, 2011: The District Court issued an amended Final Judgment, ordering the Service to complete a draft revised biological opinion by October 1, 2011, and a final revised biological opinion by December 1, 2013.

July 22, 2011: The Service accepted Reclamation's proposed operations consistent with Component 3, Action 4 of the 2008 BiOp RPA.

August 22 through September 2, 2011: Reclamation provided the Service with updated project description information.

September 29, 2011: Reclamation issued a memorandum to the Service describing planned operations for the fall of 2011. The Service issued a memorandum to Reclamation stating that projected operations for the Fall of 2011 were expected to be very close to Component 3 of the 2008 BiOp RPA.

December 13, 2011: Reclamation transmitted a memorandum to the Service outlining a process by which they intend to develop a new project description, including actions intended to protect listed species, through a NEPA process.

December 14, 2011: The Service transmitted a first draft biological opinion to Reclamation to assist in their development of a biological assessment.

February 12, 2013: Reclamation requested reinitiation of consultation as a precautionary measure on the incidental take of adult delta smelt.

February 13, 2013: The Service agreed to reinitiate the consultation with Reclamation.

February 22, 2013: The Service issued a memorandum to Reclamation correcting the incidental take statement for adult and larval/juvenile delta smelt.

April 19, 2013: Reclamation withdrew their request for reinitiation to address possible exceedance of the incidental take limit for adult delta smelt for that water year.

January 31, 2014: Reclamation requested concurrence that February 2014 drought response actions would not result in additional adverse effects to delta smelt or its critical habitat. The Service concurred with Reclamation's determination.

February 20, 2014: Reclamation requested concurrence that implementation of the proposed Old and Middle River Index Demonstration Project would result in no additional adverse effects to delta smelt or its critical habitat.

February 25, 2014: The Service acknowledged Reclamation's "no effect" determination on the proposed Old and Middle River Index Demonstration Project.

February 27, 2014: Reclamation requested concurrence that March 2014 drought response actions would not result in additional adverse effects to delta smelt or its critical habitat.

February 28, 2014: The Service concurred with Reclamation's February 27 determination.

March 13, 2014: The Ninth Circuit Court of Appeals reversed the District Court's decision and upheld the 2008 BiOp on ESA grounds, finding that it was not arbitrary and capricious.

April 8, 2014: Reclamation reinitiated consultation to address drought response actions for the remainder of that water year. The Service concurred that April and May 2014 actions would not result in additional adverse effects beyond those previously analyzed in the 2008 BiOp but requested additional information for the June through November 2014 actions.

May 1, 2014: Reclamation requested reinitiation of consultation to address drought response actions for June through November 2014. The Service concurred that the proposed changes would have no additional adverse effects on delta smelt or its critical habitat.

September 26, 2014: Reclamation requested reinitiation of consultation to address modified drought response actions for the beginning of Water Year 2015.

October 1, 2014: The Service concurred with Reclamation's September 26 determination that the proposed modified drought response actions would have no additional adverse effects on delta smelt or its critical habitat.

January 9, 2015: Reclamation requested reinitiation of consultation on the incidental take of adult delta smelt because the concern level was nearly reached. The Service completed reinitiation approving an interim methodology for calculating incidental take until it could be replaced with a proportional entrainment method.

January 27, 2015: Reclamation submitted additional information to their January 9, 2015 request seeking concurrence that drought response actions would result in no additional adverse effects on delta smelt or its critical habitat for the months of February and March 2015.

January 30, 2015: The Service accepted Reclamation's January 27 determination.

February 9, 2015: Reclamation requested reinitiation of consultation in response to a second consecutive year of dry or critically dry conditions.

February 10, 2015: The Service responded to Reclamation's February 9 reinitiation request. The Service concurred that Reclamation's drought response actions were not likely to result in additional adverse effects beyond what was analyzed in the 2008 BiOp.

March 24, 2015: Reclamation requested concurrence that the drought response modifications will result in no additional adverse effects on Delta Smelt or its critical habitat for April to September 2015.

March 27, 2015: The Service accepted Reclamation's March 24 determination.

May 22, 2015: Reclamation requested concurrence that the revised drought response modifications superseding and extending the March 24, 2015 request to November 2015 are consistent with the range of effects analyzed in the 2018 BiOp.

June 25, 2015: Reclamation submitted revised drought response modifications and requested concurrence that the modifications are consistent with the range of effects analyzed in the 2018 BiOp.

June 26, 2015: The Service accepted Reclamation's May 22 and June 25 determinations.

February 10, 2016: The Corps requested formal consultation on the Tule Red Tidal Restoration Project, a project proposed to partially fulfill RPA Component 4 of the 2008 BiOp.

February 22, 2016: The Corps requested formal consultation on the Yolo Flyway Farms Restoration Project, a project proposed to partially fulfill RPA Component 4 of the 2008 BiOp,

August 1, 2016: The Service issued a biological opinion on the Tule Red Tidal Restoration Project to the Corps. When constructed the project would partially fulfill RPA Component 4 of the 2008 BiOp.

August 2, 2016: Reclamation requested reinitiation of consultation on long-term operations of the CVP and SWP.

August 3, 2016: The Service responded to Reclamation's August 2, 2016 request agreeing that reinitiation of consultation was warranted.

November 21, 2016: The Corps requested formal consultation on the Decker Island Tidal Habitat Restoration Project, a project proposed to partially fulfill RPA Component 4 of the 2008 BiOp.

December 19, 2016: Reclamation provided the Service a draft Annotated outline of a draft Biological Assessment for ROC on LTO.

December 30, 2016: The Service, NMFS, Reclamation, CDFW, and California Department of Water Resources entered into a Memorandum of Understanding. The purposes of this Memorandum were to describe the expected tasks, processes (including schedule development), and participants for the ROC on LTO.

January 31, 2017: The Metropolitan Water District of Southern California requested Designated Non-Federal Representative status for the ROC on LTO consultation and to review and comment on the draft biological opinions and peer review process.

February 14, 2017: Reclamation convened a meeting with stakeholders and agencies to discuss the objectives, scope, and process for the ROC on LTO.

February 22, 2017: The Santa Clara Valley Water Agency requested Designated Non-Federal Representative status for the ROC on LTO consultation and to review and comment on the draft biological opinions and peer review process.

February 2017 thru August 2018: Reclamation, the Service, NMFS, DWR, and CDFW held a series of agency meetings to discuss multiple topics related to the ROC on LTO. Topics included, but are not limited to, relationship to other consultations, scope, baseline, proposed action, technical teams, effects analyses, and the NEPA and CEQA processes. During this time, multiple geographic and topic-specific technical teams were also meeting to discuss ideas for proposed operations of the CVP and SWP and conservation measures.

March 8, 2017: The Service received a request from Reclamation for concurrence that the extension of the Corps permit for years 2017, 2018, 2019, and 2020, increasing the maximum diversion rate into CCF during the months of July, August, and September does not require a separate section 7 consultation.

March 16, 2017: Reclamation requested reinitiation as a precautionary measure to address increasing the incidental take threshold of adult delta smelt for 2017.

March 17, 2017: The Service acknowledged Reclamation's request and agreed to further analyze potential effects.

April 10, 2017: The Service issued a memorandum to Reclamation authorizing additional incidental take of adult delta smelt for the remainder of that water year.

June 7, 2017: The Service responded to Reclamation's March 8, 2017 request that the extension of the Corps permit does not require a separate consultation or reinitiation of the 2008 BiOp.

August 24, 2017: The Service issued a biological opinion on the Yolo Flyway Farms Restoration Project to the Corps. When constructed the project would partially fulfill RPA Component 4 of the 2008 BiOp.

September 7, 2017: Reclamation requested reinitiation to address implementation of a one-month modification to Component 3, Action 4 of the 2008 BiOp.

September 26, 2017: The Service issued a memorandum to Reclamation concerning effects resulting from a proposed one-month modification to the Component 3, Action 4 of the RPA of the 2008 BiOp.

November 29, 2017: The Corps requested formal consultation on the Prospect Island Tidal Restoration Project, a project proposed to partially fulfill RPA Component 4 of the 2008 BiOp,

December 12, 2017: Reclamation, the Service, and NMFS met with representatives of the Yurok and Hoopa tribes to discuss issues and considerations for the ROC on LTO.

December 27, 2017: The Service received a request from Reclamation to modify the CCF Aquatic Weed Program under the 2008 BiOp.

January 19, 2018: Reclamation convened a Delta Technical Brainstorming Workshop for multiple stakeholders and agencies.

February 14, 2018: The Service issued a biological opinion on the Decker Island Tidal Habitat Restoration Project to the Corps. When constructed the project would partially fulfill RPA Component 4 of the 2008 BiOp.

March 2, 2018: Reclamation convened a Track 1 discussion for multiple stakeholders and agencies.

March 5, 2018: The Service acknowledged Reclamation's request to modify the CCF Aquatic Weed Program and determined it did not result in effects not previously analyzed in the 2008 BiOp. The Service also acknowledged Reclamation's expectation that the modifications would be incorporated in the ROC.

May 7, 2018: The Service issued a biological opinion on the Prospect Island Tidal Restoration Project to the Corps. When constructed the project would partially fulfill RPA Component 4 of the 2008 BiOp.

June 14, 2018: Reclamation requested reinitiation to address a proposed operation of the Suisun Marsh Salinity Control Gates in August 2018.

June 29, 2018: The Service determined that the August 2018 proposed operation of the Suisun Marsh Salinity Control Gates would not likely result in additional adverse effects to delta smelt or its critical habitat.

October 19, 2018: The Presidential Memorandum on Promoting the Reliable Supply and Delivery of Water in the West directed the Secretaries of Interior and Commerce to streamline regulatory processes involving western water infrastructure.

November 19, 2018: The Department of the Interior and the Department of Commerce issued a reply pursuant to the October 19, 2018, Presidential Memorandum outlining the plans and deadlines for meeting several project-specific ESA and NEPA compliance requirements, including for the Central Valley Project.

November 2018 through January 2019: The Service participated in multi-agency meetings to discuss development of the Biological Assessment.

January 28, 2019: The Service received the Corps request for formal consultation on the Winter Island Tidal Habitat Restoration Project, a project proposed to partially fulfill RPA Component 4 of the 2008 BiOp,

January 30, 2019: The Service issued a memorandum revising the incidental take statement for the 2008 BiOp.

January 31, 2019: Reclamation transmitted the Biological Assessment for ROC on LTO.

[PLACEHOLDER FOR RECEIPT OF THE FORTHCOMING SUPPLEMENT TO THE BA]