
From: Garwin Yip - NOAA Federal <garwin.yip@noaa.gov>
Sent: Wednesday, June 12, 2019 4:50 PM
To: Kimberly Clements - NOAA Federal
Subject: Fwd: Draft letter on Reinitiation of Consultation on CVP/SWP operations (v3)

FYI

-Garwin-

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----- Forwarded message -----

From: Jennifer Gilden - NOAA Affiliate <jennifer.gilden@noaa.gov>
Date: Wed, Jun 12, 2019 at 4:25 PM
Subject: Re: Draft letter on Reinitiation of Consultation on CVP/SWP operations (v3)
To: John Stadler - NOAA Federal <john.stadler@noaa.gov>
Cc: Noah Oppenheim <noah@ifrfish.org>, Arlene Merems <Arlene.R.Merems@state.or.us>, Clark, Michael <michael_1_clark@fws.gov>, Correigh Greene (correigh.greene@noaa.gov) <correigh.greene@noaa.gov>, Denise Hawkins <denise_hawkins@fws.gov>, Eric Wilkins, CDFW <eric.wilkins@wildlife.ca.gov>, franrecht@gmail.com <franrecht@gmail.com>, Hebdon, Lance <lance.hebdon@idfg.idaho.gov>, Heppell, Scott <scott.heppell@oregonstate.edu>, John Netto <john_netto@fws.gov>, Justin Alvarez (Hoopa) <jalvarez@hoopa-nsn.gov>, Karen Reyna - NOAA Federal <karen.reyna@noaa.gov>, Korie Schaeffer <korie.schaeffer@noaa.gov>, Kyle Hanson <kyle_hanson@fws.gov>, Lisa Smith <office@nsiafishing.org>, Lisa Wooninck <lisa.wooninck@noaa.gov>, Liz Hamilton <nsializ@aol.com>, Randi.Thurston@dfw.wa.gov <Randi.Thurston@dfw.wa.gov>, Roger Root <roger_root@fws.gov>, Stephen Scheiblauer (maconsult49@gmail.com) <maconsult49@gmail.com>, Tom Rudolph <TRudolph@pewtrusts.org>, Mike Burner <Mike.Burner@noaa.gov>, Howard Brown - NOAA Federal <howard.brown@noaa.gov>, Garwin Yip <garwin.yip@noaa.gov>, Elizabeth Gaar - NOAA Federal <elizabeth.gaar@noaa.gov>, Kim Kratz <Kim.Kratz@noaa.gov>

Thanks, John.

In terms of making the letter more specific, do you have any recommendations? I'm going through our previous letters on California water to see if I can find anything we might use. It would be nice to get some of this work done before the HC meeting, since are already overbooked.

See these letters:

<http://www.pcouncil.org/wp-content/uploads/2009/12/April-2016-Sacramento-Water-Letter.pdf>

<http://www.pcouncil.org/wp-content/uploads/2009/12/SRWC-Temp-Flow-Letter-May-2015.pdf>

<http://www.pcouncil.org/wp-content/uploads/BDCP-letter-FinalDraft.pdf>

There may be more (older) letters at <https://www.pcouncil.org/habitat-and-communities/habitat/habitat-document-library/>.

Jennifer

On Wed, Jun 12, 2019 at 4:16 PM John Stadler - NOAA Federal <john.stadler@noaa.gov> wrote:

Fellow HC Members,

I apologize for weighing in on this so late in the game, but I saw it only this morning when I got back from AL. Based on a conversation I had with NMFS staff in the Sacramento office who are working on the biological opinion, Jennifer and I agreed that it would be best to not send the letter. Here is why:

- It appears that there is a misunderstanding about the June 15 deadline, and I apologize for any role that I played in that. It is not a deadline for public comment, but rather a deadline for completing the ESA consultation that was established by Presidential Memorandum. As such, NMFS would not be able to do anything with the letter as the comments would be received after the consultation was complete. Remember that Barry Thom noted that it is often too late to get additional conservation at this stage of the game. The memorandum set the following deadlines for the CVP:
 - January 31, 2019. BOR must issue the final biological assessment
 - Final biological opinions from NMFS (DOC) and USFWS (DOI) are due within 135 days (June 15, 2019). Note that this deadline has recently been extended to July 1.
 - Note that the EFH consultation will be finalized at the same time.
- The letter should have been intended for BOR, not DOC or NMFS. BOR is the "owner" of the project and is solely responsible for the contents of the BA. While the Council has legitimate concerns, there is nothing NMFS can do to address the shortcomings of the BA.
- BOR is also solely responsible for implementing the EFH CRs that the Council may provide. NMFS does not have that authority. That means that it would need to be rewritten to focus on BOR's authorities and responsibilities. There is also some confusion about who to send it to at the DOC. While it is true that the regulations and presidential memoranda often use the term "Secretary of Commerce", all the DOC responsibilities of implementing the ESA and MSA have been delegated to

NMFS, so letters such as this should be sent or copied depending on the circumstance) to the West Coast Regional Administrator (Barry Thom), rather than to the Secretary.

- For future reference, the ESA does not provide an opportunity for public comment during the Section 7 consultation process. However, I've been told that the America's Water Infrastructure Now Act (WIN) does provide an opportunity for water resource agencies (but not the public at large) an opportunity to comment on such consultations. The deadline for those comments is this Friday, so NMFS staff will be very busy between now and July 1.

Here are some suggestions on how to move forward:

- Rewrite the letter and send it to BOR (with copy to NMFS), as described in the [April 2019 Decision Summary Document](#). The timeline for getting these comments to BOR is not critical, as BOR has the authority to implement them at any time. So long as they do not alter the scope of the analysis in the biological opinion (i.e., does not present issues or adverse effects that were not analyzed), BOR would not need to reinitiate consultation.
- Be as targeted as possible when describing our concerns and provide specific EFH CRs. Avoid broad generalities in EFH CRs, such as "minimize the effects of..." that give BOR the ability to say that they have been careful to already do just that.
- Informally (e.g., via email) provide NMFS with suggested EFH CRs as soon as possible so we can consider incorporating them into our EFH consultation. As I understand from Jennifer, the Council must approve any EFH CRs, which means we can't send them to NMFS until after the Habitat agenda item next Thursday, at the earliest. Given the time crunch, that may be too late to change for NMFS staff to incorporate them into the consultation.
- Do not send the letter to BOR until NMFS has had a chance to review the EFH CRs. Doing so would maximize the chance that the Council's and NMFS's CRs are aligned and minimize the chance that they conflict. This would present a "united front", as discussed by Barry Thom in April, and would increase the likelihood that BOR adopts them.

Please let me know if you have questions,
Cheers, and see yall next week,
John

On Mon, Jun 10, 2019 at 3:05 PM Jennifer Gilden - NOAA Affiliate <jennifer.gilden@noaa.gov> wrote:

Here's the latest draft, with Noah's edits and Arlene's latest.

I think we should probably hold off on more edits for now, unless they are minor, because Eric, Marci, and other California folks are editing as well and I don't want the letter to stray too far from what they are looking at. Tomorrow I'll combine the edits and submit it to our secretariat.

Jennifer

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Jennifer D. Gilden

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