



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
650 Capitol Mall, Suite 5-100
Sacramento, California 95814-4700

Refer to NMFS PCTS#: WCR-2019-11484

Date Typed Here by Admin

Mr. Ernest A. Conant
Regional Director
Mid-Pacific Region
U.S. Bureau of Reclamation
2800 Cottage Way, MP-3700
Sacramento, California 95825-1898

Re: Initiation Letter for the Endangered Species Act Section 7(a)(2) Reinitiation of Consultation on the Long-Term Operation of the Central Valley Project and State Water Project, and Essential Fish Habitat Consultation Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act

Dear Mr. Conant:

This letter is in response to the U.S. Bureau of Reclamation's (Reclamation) January 31, 2019, letter transmitting a final biological assessment (BA) in order to reinitiate formal consultation with NOAA's National Marine Fisheries Service (NMFS) under section 7 of the Endangered Species Act (ESA). The request for reinitiation of consultation concerns the potential effects of the Coordinated Long-term Operation of the Central Valley Project and State Water Project (CVP/SWP Operations) on the following NMFS' jurisdictional species:

- Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*) and their designated critical habitat,
- Central Valley spring-run Chinook salmon (*O. tshawytscha*) and their designated critical habitat,
- California Central Valley steelhead (*O. mykiss*) and their designated critical habitat,
- Southern Distinct Population Segment (DPS) of North American green sturgeon (*Acipenser medirostris*) and their designated critical habitat,
- Southern Oregon/Northern California Coast (SONCC) coho salmon (*O. kisutch*) and their designated critical habitat,
- Southern DPS of eulachon (*Thaleichthys pacificus*) and their designated critical habitat, and
- Southern Resident killer whales (*Orcinus orca*).

Reclamation has determined that CVP/SWP Operations will result in no effect to Central California Coast steelhead (*O. mykiss*) and their designated critical habitat, and therefore, has not requested consultation.



In addition, Reclamation has made the following effect determinations for essential fish habitats (EFH):

- Would adversely affect:
 - Pacific Coast Salmon
 - Pacific Coast Groundfish
- Not likely to adversely affect:
 - Coastal Pelagic Species

Therefore, Reclamation has also requested EFH consultation pursuant to the Magnuson-Stevens Fishery Conservation and Management Act of 1976.

Background

On August 2, 2016, Reclamation requested reinitiation of consultation on CVP/SWP operations, based on new information related to multiple years of drought, recent data demonstrating extremely low listed-salmonid population levels for the endangered winter-run Chinook salmon, and new information available and expected to become available as a result of ongoing work through collaborative science processes. On August 17, 2016, NMFS responded, indicating that this type of operations consultation is most efficiently done with participation of multiple agencies, including Reclamation, California Department of Water Resources (DWR), California Department of Fish and Wildlife (CDFW), and the U.S. Fish and Wildlife Service (USFWS), along with NMFS, and that we looked forward to continuing our collaborative work as we moved forward on this important issue.

On January 31, 2019, Reclamation submitted a letter, transmitting an enclosed BA to NMFS, requesting reinitiation of formal consultation on CVP/SWP Operations. On February 1, 2019, Reclamation requested that DWR, CDFW, USFWS, and NMFS hold off on reviewing or distributing the BA, as they were making changes to it. On February 5, 2019, Reclamation informed DWR, CDFW, USFWS, and NMFS that a final pdf of the CVP/SWP Operations BA had been posted to Reclamation's website at www.usbr.gov/mp/bdo/lto.html.

President's memorandum on "Promoting the Reliable Supply and Delivery of Water in the West"

On October 19, 2018, President Trump issued a memorandum on "Promoting the Reliable Supply and Delivery of Water in the West. The key excerpts pertaining to the CVP/SWP operations consultation in section 2 are provided below:

- (c) To the maximum extent practicable and consistent with applicable law, including the authorities granted to the Secretary of the Interior and the Secretary of Commerce under the Water Infrastructure Improvements for the Nation Act (Public Law 114-322):
 - (iii) The Secretary of the Interior and the Secretary of Commerce shall ensure the issuance of their respective final biological opinions for the long-term coordinated operations of the Central Valley Project and the California State Water Project within 135

days of the deadline provided in section 2(c)(ii)¹ of this memorandum. To the extent practicable and consistent with law, these shall be joint opinions.

Section 7 Consultation

From the middle of November 2018, through December 21, 2018, NMFS staff participated in interagency meetings to provide Reclamation with technical assistance in their development of the BA. However, unfortunately, the partial Federal government shutdown from December 22, 2018, through January 25, 2019, precluded any further technical assistance from NMFS staff, including the opportunity to review the draft BA prior to it being finalized and issued on January 31 and February 5, 2019.

NMFS has completed its review of the final BA, and on February 22, 2019, Reclamation, USFWS, CDFW, DWR, and NMFS convened an all-day meeting to discuss important issues in the BA associated with Shasta and Delta operations, in particular. Follow-up meetings for Trinity River, Clear Creek, Feather River, American River, the Delta, and the Stanislaus River were scheduled for the week of 2/27/19. Two follow-up meetings for Shasta operations (one on storage management, one on temperature modeling) were scheduled for 3/5/19.

Based on the information received to date, a commitment by Reclamation to work with NMFS staff to provide at least some of the additional information NMFS determines is necessary to analyze the effects of the proposed action [pursuant to 50 CFR 402.14(e)], and also in consideration of the expectation to complete the consultation within 135 days of January 31, 2019, NMFS is initiating formal consultation on CVP/SWP Operations.

Actions

- Reclamation has committed to providing resources to NMFS throughout the consultation, including to assist us with our modeling needs, and continuing to provide additional information and clarification of details in the BA. In addition, Reclamation is gathering additional information on the effects of the proposed action on Central Valley Chinook salmon runs (specifically, fall-run and late fall-run Chinook salmon) to assist in our effects analysis as it pertains to the prey base (salmon) for Southern Resident killer whale.
- NMFS and Reclamation are continuing to work on better understanding the following activities/issues:
 - Coordinated Operations Agreement: This is a very sensitive topic. NMFS' concern is that the COA is so embedded into operations that it should be a clear part of the consultation. NMFS experience is that the COA has restricted operational flexibility to manage Shasta releases in the past. Reclamation's position is that the COA is signed and they have met their ESA Section 7 obligations with a No-Effect determination and that it is not up for further discussion.

¹ Section 2(c)(ii) states that, "The Secretary of the Interior shall issue final biological assessments for the long-term coordinated operations of the Central Valley Project and the California State Water Project not later than January 31, 2019."

- Operations with Shasta Dam Raise: Reclamation would like to cover it as a site-specific, core operations action relying on a project description and analysis from the 2012 Feasibility Study. Not having it in at all poses challenges from leadership in DC. Want to figure something out. NMFS believes there is not sufficient information regarding the details of the proposed action or the effects analysis for a site-specific or programmatic consultation. FWS wants yellow-billed cuckoo supplemental information to support but does not feel this is an elevation topic.
- Fish Passage Program: Reclamation has not proposed this as part of the proposed action. Part of Reclamation's position is that this action is part of the recovery plan and Reclamation is not responsible for recovery the species. NMFS believes this action would provide water supply benefits, particularly in dry and critically dry years. The Fish Passage Program also was an important RPA action in the NMFS 2009 BiOp to partially ameliorate winter-run effects.
- Consultation status of Trinity River Restoration Program (TRRP, a.k.a. "Trinity ROD flows") and Lower Klamath flow augmentation.

- Adaptive Management Process: NMFS and USFWS do not believe that the Adaptive Management program described in the BA is sufficient to meet the standard of providing reasonable certainty to subject actions or their outcomes. NMFS and USFWS believe that the 5-agency Adaptive Management Framework (AMF) developed during CWF was developed with the understanding that it would be applied not just to CWF but the future reinitiation of CVP/SWP consultation. Reclamation maintains that they have not signed the CWF ROD and do not plan to adopt the 5-agency AMF for this consultation.
- Seasonal Operations: NMFS and USFWS do not have a clear understanding of how allocations and Reclamation's shortage policy fit into fishery protections. They are concerned that allocation decisions may be made before fishery protections are fully considered. Reclamation maintains that allocation decisions are made after all other environmental commitments are taken into account and not the other way around.
- OMR Management: The PA includes new OMR fish triggers for salmon and steelhead based on percentage of the population in the Delta. NMFS does not necessarily disagree, in theory, with the proposed metrics, but aren't aware of any population estimates for spring-run Chinook salmon and steelhead in order to implement the fish triggers. Reclamation is not proposing to fund or implement new programs to support the triggers. There is language in the PA regarding a Director-level option to off-ramp real-time OMR restrictions (see short para at bottom of p. 4-54 to top of 4-55). USFWS working on draft alternative language.
- Risk Assessments: There are a number of places in the BA where "risk assessments" are being proposed to determine subsequent actions. NMFS is unclear what the risk assessment metrics are, how they will be used to make decisions, and whether NMFS/the fish agencies have a role in the decision making or elevation.
- I:E Ratio: NMFS concerned that the proposed action does not include a suitable replacement for April/May San Joaquin steelhead protections. Delta focus group to discuss the extent that OMR criteria offer a suitable replacement.

Please contact Mr. Garwin Yip at (916) 930-3611, or via e-mail at garwin.yip@noaa.gov, if you have any questions concerning this letter or require additional information.

Sincerely,

Maria C. Rea
Assistant Regional Administrator

cc: Copy to file ARN: 151422-WCR2016-SA00300

Electronic copy only:

Paul Souza, USFWS:
Charles Bonham, CDFW:
Karla Nemeth, DWR: