



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

In response reply to:
2006/01858

DEC 11 2008

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

Dear Mr. Glaser:

This document transmits NOAA's National Marine Fisheries Service's (NMFS) draft biological opinion (Opinion, enclosure 1) based on our review of the proposed long term Operations Criteria and Plan (OCAP) for the Central Valley Project and State Water Project in the Central Valley, California, and its effects on listed anadromous fish species, and designated and proposed critical habitats, in accordance with section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*). This draft Opinion is based on information provided in the Bureau of Reclamation's (Reclamation) October 1, 2008, transmittal letter and biological assessment, discussions between NMFS and Reclamation staff, declarations filed pursuant to Pacific Coast Federation of Fishermen Association *et al. v. Gutierrez et al.* 1:06-cv-245-OWW-GSA (E.D. Cal. 2008), and an extensive literature review completed by NMFS staff. A complete administrative record of this consultation is on file at the NMFS Sacramento Area Office.

Based on the best available scientific and commercial information, the draft Opinion concludes that the long term OCAP is likely to jeopardize the continued existence of Federally listed endangered Sacramento River winter-run Chinook salmon (*O. tshawytscha*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), threatened Central Valley steelhead (*O. mykiss*), and threatened Southern Distinct Population Segment (DPS) of North American green sturgeon (*Acipenser medirostris*), is likely to destroy or adversely modify the designated critical habitats of Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, and Central Valley steelhead, and is likely to destroy or adversely modify the proposed critical habitat of Southern DPS of North American green sturgeon. The draft Opinion concludes that the long-term OCAP is not likely to jeopardize the continued existence of Central California Coast steelhead (*Oncorhynchus mykiss*).

This consultation is also considering the effects of the long-term OCAP on Southern Resident killer whales (Southern Residents) as it relates to their Chinook salmon prey. We are currently analyzing the effects of the action on fall-run and late fall-run Chinook salmon in the Central Valley, and the analysis of how a change in Chinook salmon prey by implementation of the long-term OCAP will follow. Therefore, the analysis is incomplete and not ready for review.



Pursuant to the implementing regulations to section 7 [50 CFR 402.14(g)(5)], NMFS is required to discuss with the Federal agency the availability of reasonable and prudent alternatives (RPA) that avoid violating of section 7(a)(2). We have been in discussion with you and your staff regarding the development of draft RPAs. A separate document is enclosed that contains draft RPAs for your review and for further discussion and refinement.

We are transmitting both of the enclosed documents to the CALFED Science Program (CALFED) and Center for Independent Experts (CIE) for peer review. As part of the CALFED peer review process, we are currently working on scheduling a public workshop, likely to occur sometime during the first two weeks of January 2009. Final peer reports from the CIE and CALFED are due back to NMFS by January 19, 2009, and February 1, 2009, respectively. Once Reclamation has the opportunity to complete a preliminary review of the draft, we will work with you to post the draft Opinion on the NMFS website for public access by early January.

Also enclosed are Essential Fish Habitat (EFH) Conservation Recommendations for Pacific Coast Salmon species, as required by the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) as amended (16 U.S.C. 1801 *et seq.*; enclosure 2). Our preliminary analysis concludes that the long term OCAP will adversely affect EFH of Pacific Coast Salmon species in the action area. Draft Conservation Recommendations are provided.

As you know, we are under a court order to complete and issue a final Opinion on or by March 2, 2009. Therefore, we request that you complete your review of the enclosed documents and provide us with any comments by close of business on January 9, 2009.

If you have any questions regarding this consultation, please contact Mr. Garwin Yip, of my staff, at (916) 930-3611 or via e-mail at garwin.yip@noaa.gov.

Sincerely,



Rodney R. McInnis
Regional Administrator

Enclosures (2)

cc: Copy to file ARN: 151422SWR2004SA9116
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