

SAN JOAQUIN RIVER **RESTORATION PROGRAM**



Spring-run Chinook Salmon Reintroduction Experimental Population Designation

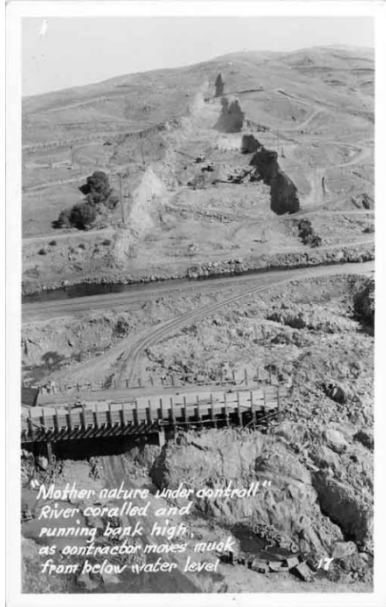
Elif Fehm-Sullivan
National Marine Fisheries Service

Overview

The San Joaquin River Restoration Program is a comprehensive long-term effort to restore flows and a self-sustaining Chinook salmon fishery while reducing or avoiding adverse water supply impacts.



San Joaquin River Settlement History



- 1988 Lawsuit filed by NRDC challenging Reclamation's renewal of the long-term contracts with Friant Division contractors
- 2004 Federal Judge rules Reclamation violated Section 5937 of the CA Fish and Game Code
- 2005 Settlement negotiations reinitiated to avoid remedy phase
- 2006 Settlement reached, implementation begins
- 2009 Federal legislation enacted



Legal Consistency

- Federal legislation for SJRRP:
 - Spring-run reintroduced under the SJR Restoration Settlement Act shall be as 10(j) experimental population, and
 - Special 4(d) take exemptions required,
 - Provided that reintroduction can be permitted

- State law: new authority
 - CDFW may concur with NMFS SJR spring-run experimental population designation

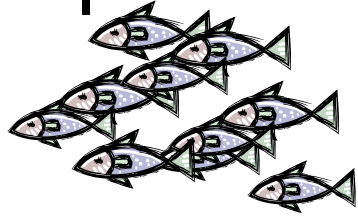
Steps for Spring-run Chinook Salmon Reintroduction



Collect source fish



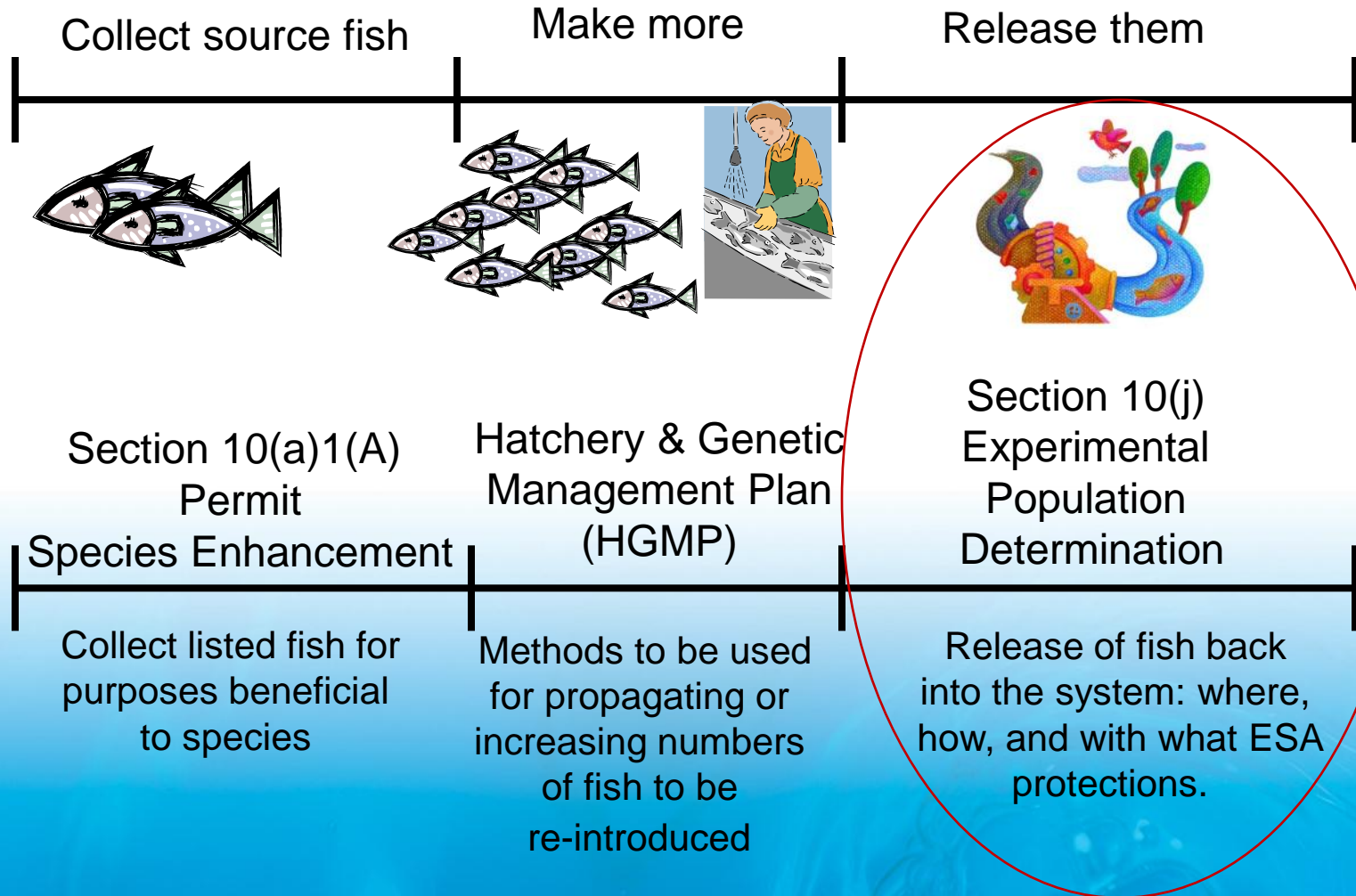
Make more*



Release them



ESA Steps for Spring-run Chinook Salmon Reintroduction



Statutory and Regulatory Framework

Experimental Population 10(j)

- Delineated area
- Threatened status
- Section 9: prohibits “take”
- Section 4(d):
 - May exempt “take” prohibition
 - For conservation purposes
 - For Threatened species
 - Applies also to non-federal entities



ESA Section 10(j) Requirements

- Three key elements:
 - Will this further Conservation of the Species?
 - Means to identify the experimental population?
 - Is the population essential to the continued existence of the species in the wild?

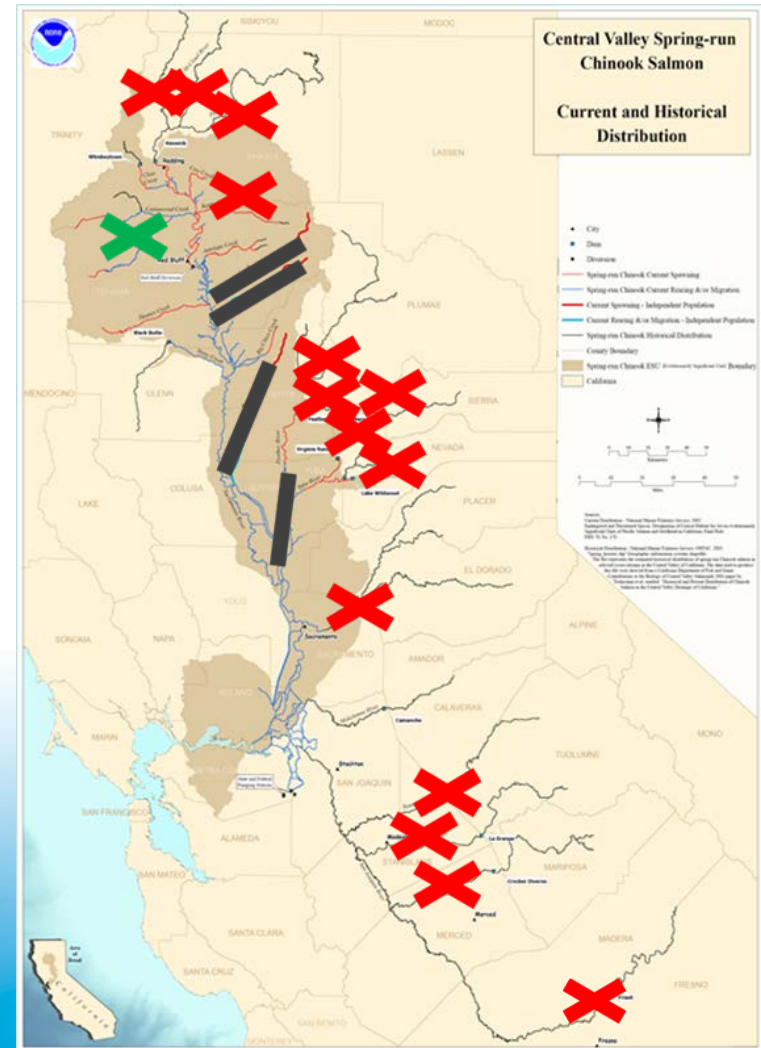


Will This Further Conservation of the Species?

- Take only allowed through ESA section 10 and section 7 authorities.
- SJRRP channel and habitat improvements
- Collection of fish for founding stock will consider source population condition and San Joaquin River habitat condition.
- Conservation fish facility will minimize the number individuals taken from existing populations.
- Other State and Federal Laws in existence
 - Voluntary third party programs (e.g. diversion screens)

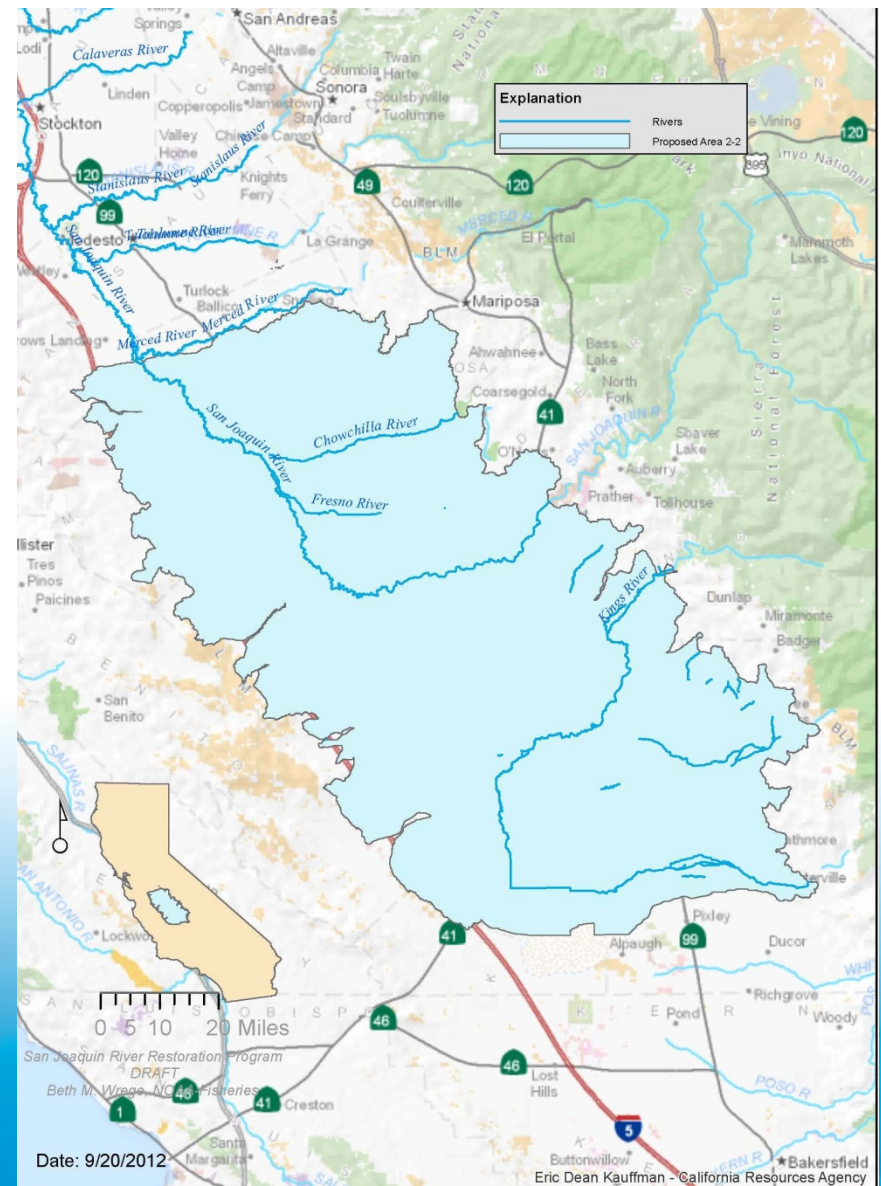
Essential to the Continued Existence of the Species in the Wild?

- Other spring-run populations exist currently
- Geographic location of proposed population will not interfere with current populations
- Nonessential experimental population (NEP)



The Proposed Rule Itself

- Geographic boundary
 - 10(j) rule location
 - San Joaquin River
 - All accessible waterways and tributaries until Merced River
 - Kings River





Take Exemptions in NEP

– Unintentional or incidental to otherwise lawful activities

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

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PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

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■ 2. Add § 223.301 paragraph (b) to read as follows:

§ 223.301 Special rules—marine and anadromous fishes.

(b) San Joaquin River CV spring-run Chinook Salmon Experimental Population (*Oncorhynchus tshawytscha*).

(1) The San Joaquin River CV spring-run Chinook salmon population identified in paragraph (b)(5) of this section is designated as a nonessential experimental population under section 10(i) of the ESA.

(2) *Prohibitions.* The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538 (a)(1)) relating to endangered species apply to fish that are part of the threatened, nonessential experimental population of CV spring-run Chinook salmon identified in paragraph (a)(4) of this section.

(3) *Allowable take of CV spring-run Chinook salmon in the Experimental Population Area:*

(i) Any taking of CV spring-run Chinook salmon provided that it is unintentional, not due to negligent conduct, and incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Examples of otherwise lawful activities include recreation, agriculture, municipal usage, and other similar activities, which are carried out in accordance with Federal, State, and local laws and regulations.

(ii) Any taking of CV spring-run Chinook salmon by an employee or designee of NMFS, the USFWS, other

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(F) Electro fishing in any body of water known or suspected to contain fish in the experimental population is conducted in accordance with NMFS "Guidelines for Electro-fishing Waters Containing Salmonids Listed Under the Endangered Species Act" (NMFS, 2000a).



Take Exemptions in NEP

– Fishery management actions by other governmental entities to conserve the species (rescue, etc.)

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Take Exemptions in NEP

– Scientific research or enhancement purpose with a permit

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Prohibited Take

– Take of salmon by all activities that are illegal or not allowed under law

– Intentional direct take

- No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever

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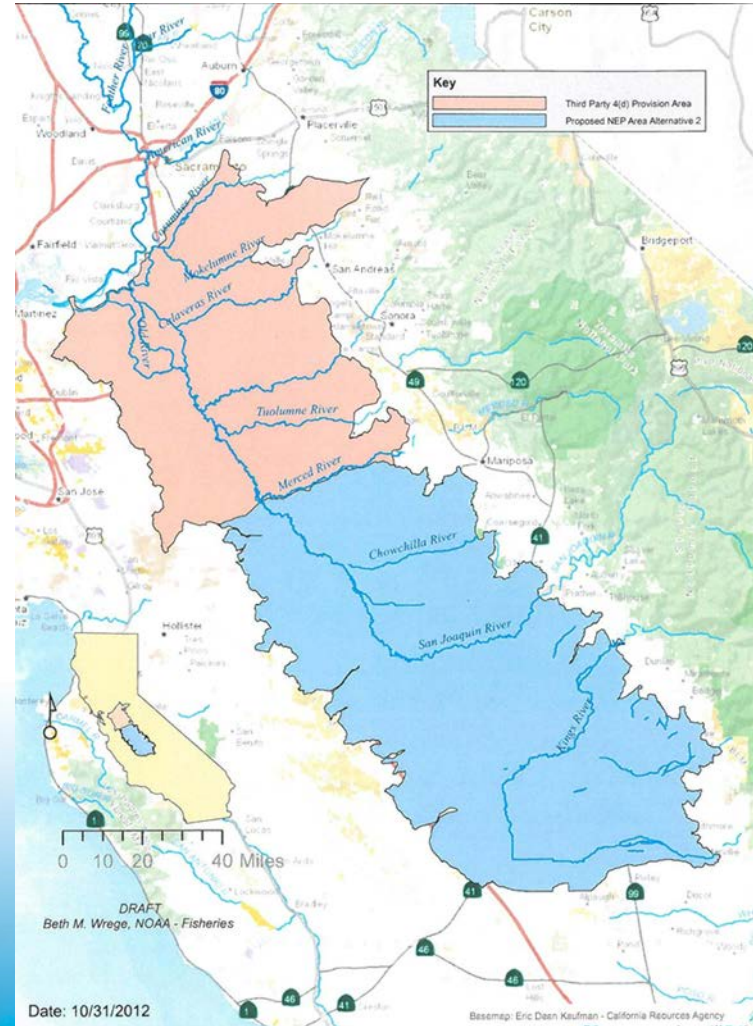
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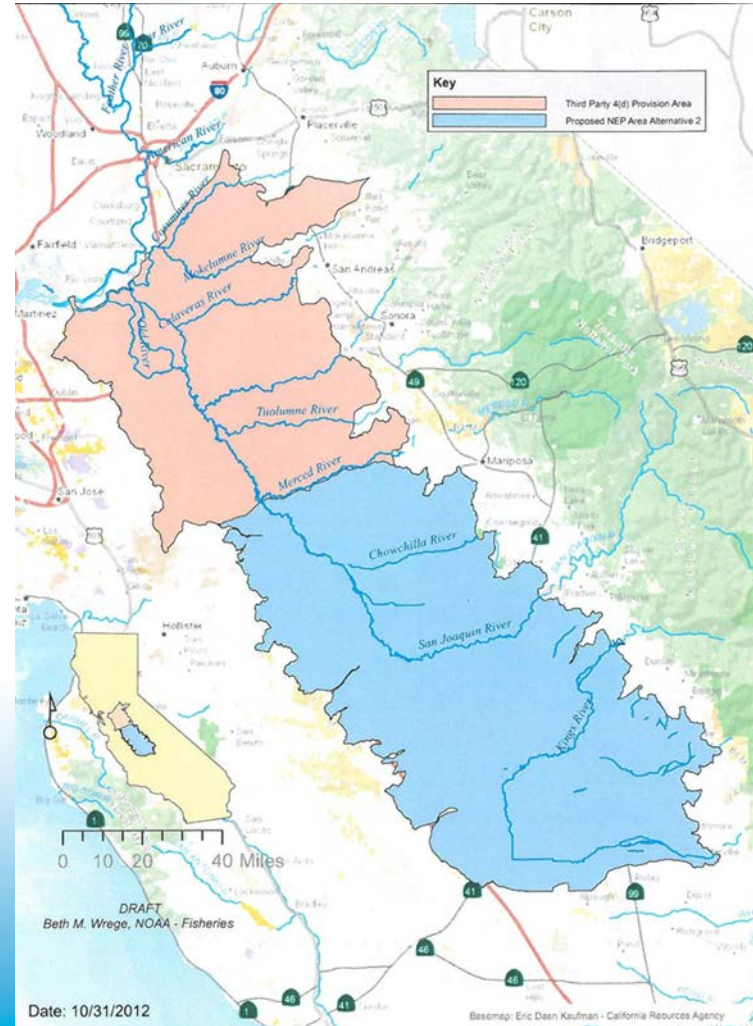
Take Exemption Outside NEP Area

- San Joaquin River and Tributaries:
- Any take by otherwise lawful activities related to diverting or receiving water pursuant to applicable State and Federal laws.



Take Exemption Outside NEP Area

- Any take at the CVP and SWP projects in the Delta that originate from reintroduction to the San Joaquin River
 - Annual memo
 - January 15th
 - Method for deducting from operational triggers



Management in the “Blue Area”

- Existing lawful activities will not change
- NMFS will work with State Fish and Wildlife on adjusted fishing regulations, as needed
- NMFS and the SJRRP Implementing agencies have responsibility to ensure successful reintroduction of the species
- Voluntary partnerships are encouraged





Management in “Pink Area”

- Reintroduction will not impose more than *de minimus (sic)*:
 - water supply reductions
 - additional storage releases,
 - or bypass flows,

on persons or entities receiving or diverting water due to the reintroduction.



Alternatives Considered

- No Action
- Action: Reintroduce Spring-run Chinook salmon, with special regulations
 - Source Populations
 - 10(j) Experimental Population Area
 - 10(j) Experimental Population Duration



www.restoresjr.net

Quick Link to:

“NMFS Salmon Reintroduction Information”

Protect Existing Populations

- Take only allowed through ESA section 10(a)(1)(A) and section 7 authorities.
- Conservation fish facility will minimize the number of individuals taken from existing populations.
- Collection of fish for founding stock will consider source population condition and San Joaquin River habitat condition.

