

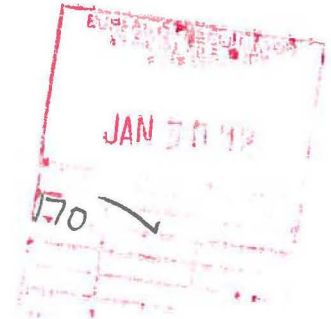


UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

JAN 27 2012

In response reply to:
2011/05790

Ms. Alicia Forsythe
Program Manager
San Joaquin River Restoration Program
U.S. Bureau of Reclamation
Mid-Pacific Region
2800 Cottage Way
Sacramento, California 95825-1898



Dear Ms. Forsythe:

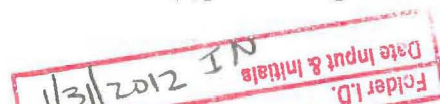
This is in response to the Bureau of Reclamation's (Reclamation) November 30, 2011, letter and enclosed Biological Assessment (BA) requesting to initiate formal Section 7 consultation with NOAA's National Marine Fisheries Service (NMFS) pursuant to the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 153 *et seq.*). The request was received on December 1, 2011. The consultation concerns the potential effects of the implementation of the San Joaquin River Restoration Program (SJRRP) 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 of North American green sturgeon (*Ascipenser medirostris*) and their designated critical habitat.

In addition, although your transmittal letter did not request Essential Fish Habitat (EFH) consultation under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended in 1996, the BA provides an EFH assessment in Chapter 6.

NMFS has reviewed the information provided with your letter and found that all of the information necessary to initiate formal consultation has not been provided in certain key areas. Formal consultation shall not be initiated by a Federal agency until a BA has been completed and submitted to NMFS, as outlined in the regulations governing interagency consultation [50 CFR § 402.14(c)]. Formal consultation begins once NMFS has received all of the information necessary to evaluate the effects of the action on listed species and critical habitat. This letter transmits the information that is necessary to initiate formal ESA consultation and conduct an EFH consultation. NMFS may provide Reclamation with additional comments on the BA at a later date during the consultation process [50 CFR 402.14(e)] following our complete review.

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Endangered Species Act

Over the past year, NMFS staff provided technical assistance to Reclamation staff in the form of general and specific comments on the draft SJRRP BA in order to develop a complete initiation package. All previous comments are incorporated by this reference and should be addressed in their entirety in the SJRRP BA.

In addition, NMFS requires the following general information to initiate formal consultation on the SJRRP, as outlined in the regulations governing interagency consultation [50 CFR 402.14]. The specific information required to complete the consultation package is described under each general information category.

- 1) A description of the action to be considered [50 CFR 402.14(c)(1)].

The project must be described in sufficient detail so that an analysis of effects can be conducted.

- a) Essentially, the Proposed Action from Alternative A1 of the SJRRP draft PEIR/S is presented as the project description for the purposes of ESA consultation even though that alternative has not been identified as the preferred alternative and a Record of Decision has not been made. This indicates that the project description could change and that ESA consultation is premature.

All Friant operations, including flood operations should be included in the project description. The operations of the Friant Dam/Division were not included in the 2008 BA for the Continued Long-term Operations of the Central Valley Project and the State Water Project as described on page 2-70 of the BA;

“At this time, the Friant Division is generally hydrologically disconnected from the Delta as the San Joaquin River is dewatered in two reaches, between Friant Dam and the confluence of the Merced River, except in extremely wet years. Under flood conditions, water is diverted into two bypass channels that carry flood flows to the confluence of the Merced River.

In 2006, parties to NRDC v. Rodgers executed a stipulation of settlement that calls for, among other things, restoration of flows from Friant Dam to the confluence of the Merced River. Implementation of the settlement is not included in this consultation as it is a large project which has not been sufficiently developed to allow for analysis of the effects of implementation of settlement action on listed aquatic species at this time. At some point in the future, consultation may need to be reinitiated to evaluate the effects of the Restoration Program on continued CVP and SWP operations.”

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There are several options for conducting this large consultation, and we request a meeting with you to decide on the best course of action.

- b) The project description must have a temporal component based on the current implementation schedule of the SJRRP. For example, Interim Flows 2009-2012 have already been consulted on so cannot be consulted on again. Full Restoration Flows are scheduled to occur in 2014, but given the levee instability and seepage issues this is unlikely to occur. The actual flows that can be expected during any given year must be represented in the project description.
 - c) The operation of Hills Ferry Barrier with respect to the SJRRP and in relation to the reintroduction of fall-run and/or spring-run Chinook salmon is unclear. At present, the Hills Ferry Barrier is operated by the California Department of Fish and Game (CDFG) to mitigate losses of fall-run Chinook salmon at the State Water Project export facilities. NMFS has consulted on ESA effects with the Army Corps of Engineers, with CDFG as their applicant, and has authorized CDFG management and monitoring actions at the barrier through section 4(d) permitting. This original purpose appears to be transitioning to a merged function with the SJRRP which is not well defined as to function and duration. For example, under what conditions would the Hills Ferry Barrier no longer be operated in order to allow anadromous fish unimpeded access to the Restoration Area?
 - d) Monitoring is an important component of the project description. The proposed monitoring primarily involves physical monitoring related to flow, seepage, channel capacity, native vegetation, and spawning gravel but does not involve biological monitoring directly related to fisheries. We are concerned that no monitoring is proposed at a program-level, in particular to monitor the Chinook salmon reintroduction and proposed benefits of the SJRRP to steelhead. We acknowledge that Reclamation has included a Steelhead Monitoring Plan to assess and minimize effects on steelhead, although it is unclear if Reclamation plans to carry out this monitoring for the life of the SJRRP. The Restoration Flow Guidelines are not described in the project description and yet these guidelines are essential to future flow schedule determinations. These guidelines and subsequent flow schedule implementation are an important piece in determining the overall impact of the restoration program to listed species.
- 2) A description of the specific area that may be affected by the action [50 CFR 402.14(c)(2)].

Although the geographic boundaries for the action area are clearly defined, the rationale for ending the downstream boundary of the action area at the south Delta is not clearly demonstrated in the analysis of impacts. The action area as described was appropriate for the Interim Flows 2009-2012 consultations due to the small amount of flow release from Friant Dam and the unlikely event that the released water would be recaptured at the Delta facilities. Because the proposed action involves full Restoration Flows, the amount

of water released from Friant and subsequently recaptured at the Delta facilities may influence anadromous fish habitat conditions or behavior downstream of the south Delta.

- 3) A description of any listed species or critical habitat that may be affected by the action [50 CFR 402.14(c)(3)].

The description of listed species potentially affected by this action has been described accurately in the BA. However, the extent of critical habitat within the action area and relative to the proposed action has not been described for steelhead or green sturgeon.

- 4) A description of the manner in which the action may affect any listed species or critical habitat and an analysis of any cumulative effects [50 CFR 402.14(c)(4)].
- b) The effects analysis (as with the project description) must have a temporal component. There is likely a time period between now and when all Phase I actions are completed that listed species may be affected by the project due to poor habitat conditions. Between Phases I and II fish habitat conditions will presumably improve but there may be specific actions that impact listed species. These impacts must be described based on expected conditions and the proposed actions over time.
 - c) The effects analysis must also describe any take and/or impact to critical habitat that could occur as a result of the proposed action. Under the SJRRP, take of listed anadromous fish could potentially occur from a variety of causes including; operation of Hills Ferry Barrier, unscreened diversions, flow fluctuations causing stranding or stress, inadequate flow and/or barriers blocking migration, inadequate flow causing elevated water temperatures, or thermal loading to areas downstream of the Restoration Area, monitoring.
 - d) The project description must include all Friant operations and the full range of effects of these operations on listed species so that NMFS can use this information in our jeopardy analysis.
- 5) Relevant reports, including any environmental impact statement, environmental assessment, or BA prepared [50 CFR 402.14(c)(5)].

At this time it would appear that relevant reports have been made accessible, although we reserve the option to request additional clarifying information in the consultation process.

- 6) Any other relevant available information on the action, the affected listed species, or critical habitat [50CFR 402.14(c)(6)].

At this time it would appear that relevant reports have been made accessible, although we reserve the option to request additional clarifying information in the consultation process.

Essential Fish Habitat

NMFS requires the following general information in order to conduct a thorough EFH consultation, as outlined in the regulations implementing the EFH provisions of the MSA (50 CFR 600.920). Again, the specific information required is described under each general information category.

- 1) The EFH Assessment needs to have a clear delineation of the action area.

Although the geographic boundaries for the action area are clearly defined, the rationale for ending the downstream boundary of the action area at the south bay is not clearly demonstrated in the analysis of impacts. The action area as described was appropriate for the Interim Flows 2009-2012 consultations due to the small amount of flow release from Friant Dam and the unlikely event that the released water would be recaptured at the Delta facilities. Because the proposed action involves full Restoration Flows, the amount of water released from Friant and subsequently recaptured at the Delta facilities may influence anadromous fish habitat conditions or behavior downstream of the south Delta.

- 2) An analysis of the potential adverse effects of the action on EFH of the managed species [50 CFR 600.920(e)(3)(ii)].

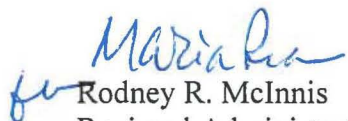
The EFH assessment lacks an in-depth analysis of the proposed action on EFH habitat conditions for managed species that may be affected, including sufficient detail to accurately assess potential impacts to EFH for specific Pacific salmon life history stages.

- a) Information from Appendix A entitled “Identification and Description of Essential Fish Habitat, Adverse impacts, and Recommended Conservation Measures for Salmon”) of the Salmon Fishery Management Plan (FMP) should be incorporated into the EFH Assessment.
 - b) Salmon FMP Appendix A, Section 3.2: Tables A-8 and A-9 should be used to develop a comprehensive list of all habitat types and components that can be impacted by activities associated with the implementation of the SJRRP. Once established, this list should serve as the basis for evaluation impacts to EFH within the action area to ensure a consistent and comprehensive assessment. Tables A-10 and A-11 should be used to evaluate the function and performance of the project elements, and to further address habitat concerns during specific Pacific salmon life stages.
- 3) Given the general scope and complexity of the project, as much additional information as possible, as described in section 600.920(e)(4) of the EFH regulations, should be provided in the EFH Assessment.

Once we receive this additional information, we will send you a notification letter, which will also outline the dates within which formal consultation should be completed and the biological opinion delivered on the proposed action.

NMFS appreciates the effort of Reclamation staff in developing the BA. NMFS will continue to be available to provide technical assistance towards the development of a complete BA and initiation package. Please contact Ms. Erin Strange at (916) 930-3653, if you have any questions concerning this letter or require additional information.

Sincerely,


Rodney R. McInnis
Regional Administrator

Cc: Copy to file – ARN 151422SWR2011SA00571
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