



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Pacific Southwest Region
2800 Cottage Way, Room W-2606
Sacramento, California 95825-1846



IN REPLY REFER TO:
FWS/R8/RD

MAR 17 2017

Memorandum

To: Regional Director, Bureau of Reclamation, Mid-Pacific Region
Sacramento, California

From: *Acting* Regional Director, Fish and Wildlife Service, Pacific Southwest Region
Sacramento, California

Subject: Reinitiation of Consultation on the 2008 FWS Coordinated Long-Term Operation of the CVP and SWP Biological Opinion and Associated Incidental Take for the 2017 Water Year

This memorandum acknowledges your request, dated March 16, 2017, to re-initiate the Endangered Species Act Section 7(a)(2) consultation on the U.S. Fish and Wildlife Service (Service) 2008 Biological Opinion (2008 BiOp) on the Coordinated Long-Term Operation of the Central Valley Project (CVP) and State Water Project (SWP). We are reviewing your request to provide additional incidental take of adult delta smelt under the 2008 BiOp, along with the Combined Federal-State Delta Near-Term Operations Plan you have provided, and will respond soon.

Conditions in water year (WY) 2017 have been very wet and have led to extremely high flows in both the Sacramento and San Joaquin river watersheds. The wet and cool weather, along with positive Old and Middle river flow, have created favorable conditions for delta smelt. Reclamation and the Department of Water Resources' (DWR) planned operation through the end of April will continue to maintain favorable conditions in the south Delta for delta smelt and other species for the foreseeable future. This operation will meet demands south of the Delta while allowing for DWR to make necessary repairs in the Clifton Court Forebay.

Based on a review of the recent historical record, it is apparent that in wet years with Vernalis flows above 10,000 cubic feet per second (cfs) during December or the first half of January there has been a higher percentage of annual salvage in March and April. This occurred in 1997, 1998, 2006 and 2011. In most other years, roughly 80% on average of the annual salvage has occurred by this time of the year. The years with the highest Vernalis flow in December and January (1997 and 2006) had the highest salvage in March and April. While Vernalis flow was not high in December 2016, Vernalis flow reached 10,000 cfs on January 12 and has continued to increase through the winter, peaking on February 23 at 41,700 cfs. Flow at Vernalis remains approximately 28,000 cfs. In each of the four years with flow above 10,000 cfs at Vernalis in December and January, the Fall Midwater Trawl index increased over the previous year's index.

Based on this review, and the Vernalis conditions in WY 2017, we anticipate there may be additional incidental take above that identified in the incidental take statement in the next several weeks. That

said, as previously stated, we believe Reclamation and DWR's planned operations through the end of April will maintain favorable conditions for delta smelt. In response to the reinitiation request, we will further analyze whether ongoing operations will result in effects and incidental take beyond those analyzed in the 2008 BiOp. If so, we will analyze the magnitude of the effects and work closely with you, DWR, and the Department of Fish and Wildlife to adaptively manage and avoid or minimize impacts, consistent with the Endangered Species Act, Water Infrastructure Improvements for the Nation Act and the requirements of state law. We will be undertaking these analyses as quickly as possible.

As you mentioned in your March 16, 2017 letter, this request to review the level of incidental take under the 2008 BiOp is separate from your larger reinitiation request dated August 2, 2016. The reinitiation requested provided via this memorandum is intended to serve a short-term purpose to address possible delta smelt take only until the end of the critical adult phase for delta smelt for WY 2017.

As a reminder, pursuant to section 7(d) of the Act, the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2).

Thank you for your continued leadership in protecting the Bay Delta ecosystem. Service staff will be available to meet with your staff to proceed through the reinitiation process. If you have any questions, please do not hesitate to call.