

NOAA's National Marine Fisheries Service Projects in CA -- Water

- 1) What is the current status of all NMFS-led actions in the State of California that impact water flow to farmers/other water users? (Bi-Ops, pilot programs, etc)--- **see table below. Note, however, that this list is not all-inclusive, and only represents the most significant projects.**
- 2) What can NMFS do to expedite actions the increase the release of water to farmers/other water users in California?
 - Bureau of Reclamation or other federal agencies determine the water releases (quantity and timing), and those agencies consult with NMFS to design their actions consistent with the ESA.
 - Under the WIIN Act and ESA, NMFS evaluates the action agencies' proposals and consults with them to modify their actions to balance water needs with the needs of ESA-listed species, allowing for maximum flexibilities that provide increased water supply and flow and avoid jeopardizing ESA-listed species. In NMFS' 2009 biological opinion on Long-term Operations (LTO) of the Central Valley Project (CVP) and State Water Project (SWP) for example, many of the actions are less restrictive in drier years in recognition of water supply needs.
- 3) With regards to the list of actions in topic #1, if there is a competing DOI proposals – please list those proposals and indicate whether DOI's proposal is more restrictive, less restrictive or equal with regards to water delivery to farmers and other users. --- **see table below**

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NMFS 2009 Consultation on Long-term Operations (LTO) of the Central Valley Project (CVP) and State Water Project (SWP) [Authority: Section 7 of the Endangered Species Act (ESA)] -- Current BiOp	NMFS consulted on the effects of CVP and SWP on ESA-listed salmon and steelhead (salmonids) and sturgeon. The CVP and SWP are currently operating consistent with NMFS' 2009 biop. CVP and SWP includes many major dams such as Shasta and Keswick Dams on the	NMFS consulted on listed anadromous fish and USFWS (DOI) consulted on ESA-listed delta smelt. The resulting consultations have different flow requirements and thresholds.	The differences between NMFS and DOI consultations are based on the biology and life history needs of the species involved. I.e., smelt, salmonids, and sturgeon have different needs that the consultations are tailored around. Generally, the presence of NMFS and USFWS	NMFS provided flexibility in the biop to change requirements to adapt and respond to real-time conditions, i.e., water flows and fish needs, allowing for maximum flexibility. For example: export reductions in November and December and more positive Old and Middle River flow levels

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	Sacramento River, New Melones on the Stanislaus River as well as the federal and state Delta pumping facilities and associated infrastructure.		species do not overlap so the flow requirements do not conflict. In the rare instances when species happen to be present at the same time, the involved agencies have daily consultations to determine which agency's flow requirements control.	January through June 15 are not required unless loss density triggers at the Delta export facilities are exceeded; exports as a fraction of San Joaquin River inflow are less restrictive in drier years; fewer miles of spawning and incubation habitat in the Sacramento are required when Shasta storage and cold water pool is limited; minimum instream flows on the Stanislaus River flows are a function of local storage and hydrology.
Reinitiation of Consultation on the Long-term Operations (LTO) of the Central Valley Project (CVP) and State Water Project (SWP) [Authority: ESA Section 7]	Bureau of Reclamation anticipates completing their project description in Dec 2019, at which time they would request from NMFS reinitiation of the 2009 ESA consultation. NMFS is currently providing BOR with technical	NMFS is not aware of DOI's latest involvement on this, but they would likely also reinitiate consultation for smelt.	N/A	NMFS will consider all flexibilities available, as it did in the 2009 LTO BiOp. Additional factors, such as potential reintroduction of an experimental population of ESA-listed salmon in the McCloud River above Shasta

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	assistance as requested.			Dam, that NMFS is currently pursuing, could increase options for flexibility.
Designating DOI's reintroduction of Sacramento River winter-run Chinook salmon above Shasta Reservoir on the McCloud River as a "nonessential" experimental population [Authority: ESA Section 7 and 10(j)]	NMFS' proposed rule is currently under review at DOC. Once cleared, it will be published in the Federal Register for public comment. NMFS engaged stakeholders to inform DOI's reintroduction and is developing this rulemaking to mitigate ESA consultation needs above Shasta.	DOI has thus far been supportive of NMFS' efforts towards supporting reintroduction.	DOI operates a conservation hatchery that can supply fish for reintroduction.	A successfully reintroduced population above Shasta would provide Chinook access to upstream habitat and refuge from high temperatures downstream of Shasta/Keswick dams. This benefit could allow more flow flexibility to provide water downstream of Shasta/Keswick dams during drought years.
San Joaquin River Restoration Program [Authority: SJ River Restoration Settlement Act (Public Law 111–11)]	The settlement has schedules for restoring habitats and water flows on the SJ River. Progress is ongoing.	DOI and DOC are part of an implementing agency team (5 state and fed agencies involved). No competing proposals.	None	Flexibilities to increase water flows are built into the Settlement hydrographs and flow schedule. Flows are adaptively managed by implementing agencies.
CA Water Board's Release of Bay-Delta	In July 2018, California's State Water	We believe DOI comments were	Minor if any	NMFS does not have a role in developing the

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Water Quality Control Plan Revisions	Resources Control Board released proposed updates to their Bay-Delta Water Quality Control Plan that would change Central Valley flows. NMFS submitted technical assistance comments during the open public comment stage of the process, approximately two years ago, and NMFS participated on a federal and state agency panel at the Board's public workshop for the Lower San Joaquin River and Southern Delta update. NMFS does not anticipate further engagement.	consistent with NMFS comments.		Plan; NMFS offers only optional technical advice. If adopted and implemented, the proposed changes would result in significant changes to flows in the Central Valley, and they would need to be considered in NMFS' ongoing and future efforts, such as the reinitiation of consultation on the current NMFS Biological Opinion on LTO of the CVP and SWP. However, even if adopted by the Board, expected legal challenges could delay plan implementation for ten or more years.
Water Infrastructure Improvements for the Nations Act (WIIN)	The WIIN Act contains several important components requiring the Secretaries of Interior and Commerce to provide the maximum	Provisions generally apply to both Agencies	Based on species differences (i.e., biological needs)	Consistent with the Act, NMFS works with DOI and relevant state agencies to help maximize water flow flexibility depending on

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	quantity of water supplies practicable. Provisions relate to water management topics such as Old and Middle Rivers flow requirements, temporary flexibility during storm events, consultation on coordinated operations, and New Melones reservoir operations. NMFS' implementation is ongoing.			storm and rainfall conditions (e.g. high rainfall, drought, etc.). NMFS provides technical assistance (evaluations of real-time fish distributions, estimates of entrainment risks, etc.) in order to help evaluate whether or not a particular WIIN Act flexibility would result in additional adverse effects on the listed species beyond the range of effects anticipated to occur for the duration of the CVP/SWP LTO biological opinion.
NMFS Consultation for the Federal Energy Regulatory Commission's (FERC) Relicensing of the Oroville Facilities Hydroelectric Project (FERC No. 2100-134)	The Oroville Facilities are also known as the Feather River Division of the broader State Water Project (SWP), which is operated under a coordinated agreement between the	DOI issued a biological opinion for this project in 2007 that covers its ESA-listed species (vernal pool fairy shrimp, vernal tadpole shrimp, valley elderberry longhorn	There are many differences between the two biological opinions but we are not aware of any conflicting requirements.	Flexibilities are built into the proposed action and a multiparty settlement agreement. For example, NMFS worked with FERC to include flexibility provisions relating to temperature

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[Authority: ESA Section 7]	Bureau of Reclamation (BOR) and California Department of Water Resources (DWR). Oroville Reservoir is the cornerstone storage facility of the SWP. NMFS' nexus is through FERC's issuance of a license to operate the facility under the Federal Power Act, which authorizes NMFS to issue mandatory improvements for fish passage or recommend protective measures for fish. NMFS issued a biological opinion to FERC in 2016. FERC has delayed license issuance due to the Oroville Spillway emergency early 2017. The NMFS biological opinion will come into effect once FERC issues, and DWR accepts, the new license.	beetles, California Red-legged frogs, giant garter snakes, bald eagles, Butte County Meadowfoam, hairy orcutt grass, Hartwegs golden sunburst, Laynes ragwort and Delta Smelt).		management of Feather River water. Water temperature criteria can be met with flow adjustments, facility modifications, or a combination of both. Flexibility is largely dependent on water storage in Oroville Reservoir. The Agreement is available at: http://www.water.ca.gov/orovillereicensing/settlement_agreement.cfm

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Don Pedro Dam Relicensing	NMFS is participating in the FERC licensing activities of the Don Pedro and La Grange Hydroelectric Projects under the authorities of the Federal Power Act. FERC is currently preparing draft NEPA documents. NMFS continues to provide FERC technical assistance. Multiple state, federal, and private interests have filed recommendations for terms and conditions of the new license. FERC will make the final determination.	DOI's filing reserved its authority under the FPA to prescribe passage in the future and provided flow recommendations. .	Both NMFS and DOI reserved their authority under the FPA to prescribe passage in the future ¹ . NMFS additionally recommended studies to assist with fish passage planning, and DOI did not. NMFS and DOI both provided recommendations on water flows and there are only minor differences in the recommendations.	NMFS recommendations offer flexibilities based on flow regimes and changing water conditions.
Klamath Irrigation Project Reinitiation of Consultation [Authority: Endangered]	NMFS is actively participating in the Agency Consultation Team which includes	Competing demands for water supply exist in the Klamath Basin. DOI and NMFS are trying to find	One unified proposal (Reclamation's modified Proposed Action) is being developed. NMFS	Agency Team is optimizing the balanced use of the limited water supply to meet the

¹ It is longstanding practice for USFWS to defer to NMFS on issues regarding anadromous fish above dams in California. However, FWS does have authority under the Fish and Wildlife Coordination Act for salmon and steelhead and has reserved its authority under the Federal Power Act to prescribe passage in the future.

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Species Act (ESA)].	Bureau of Reclamation and US Fish and Wildlife Service. Due to ongoing court ordered flows resulting from litigation, the Agency Team is working to accelerate the ESA reinitiation process and develop a proposed action for water management to serve the needs of listed species and the irrigation community.	solutions that optimize the balanced use of the limited water supply to meet the needs for the species and the irrigators. USFWS' jurisdiction includes the management of two ESA-listed species in the Upper Klamath Basin (2 sucker fish), and management of multiple wildlife refuges. Reclamation manages water deliveries to Project irrigators.	and USFWS are planning to prepare a joint biological opinion to avoid conflicts between the opinions for listed species under the agency's respective jurisdictions. Suckers are in the upper basin, salmon are in the lower basin, so there are spatial and temporal differences in terms of waters needs based on their location and life history.	needs of listed species and Project irrigators.
United Water Conservation District ("United") seeking a Habitat Conservation Plan (HCP) and associated Incidental Take Permit, which focuses on fish passage and instream flow impacts to endangered Southern California steelhead caused by its diversion structure on	United anticipates submitting an "administrative draft" of the HCP to NMFS in September 2018; NMFS is providing technical assistance in the interim.	Most recent iteration of draft "multi-species" HCP shared with NMFS included USFWS ESA-listed species.	None.	NMFS and United are negotiating a fish passage structure and in-stream flow regime which addresses endangered steelhead needs, while providing sufficient flow to farmers and other water users on the drought-impacted Oxnard Plain.

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the Santa Clara River. [Authority: Endangered Species Act (ESA)].				