

MEMORANDUM OF AGREEMENT
between
National Marine Fisheries Service West Coast Region
and the
California Department of Fish and Wildlife

Fishery Agency Participation for Implementation of
the Federal and State Endangered Species Acts

Section I. Purpose

The purpose of this Memorandum of Agreement (hereafter, “Agreement”) is to facilitate joint participation, communication, coordination, and collaboration between the National Marine Fisheries Service West Coast Region (hereafter, “NMFS” or “Fishery Agency”), and the California Department of Fish and Wildlife (hereafter, “CDFW” or “Fishery Agency”) collectively “Fishery Agencies,” regarding implementation of the Endangered Species Act of 1973, as amended (hereafter, “ESA”), and the California Endangered Species Act, as amended (hereafter, “CESA”), within the State of California (hereafter “State”).

Section II. Recitals

WHEREAS, NMFS, a Federal regulatory agency, is responsible for initiating, conducting, and supporting programs for the conservation of threatened and endangered species of wildlife, and the ecosystems of which they are a part, under the authority of the ESA;

WHEREAS, CDFW, a State natural resource agency and trustee for the State’s fish and wildlife resources, has determined that participation in implementing the ESA is essential to the State’s interest in, and authority for, management of the fishery resources that are held as a public trust for the people of the State;

WHEREAS, CDFW and NMFS have executed a Cooperative Agreement pursuant to Section 6 of the ESA which recognizes that the State maintains an acceptable conservation program for resident species of fish and wildlife that are listed as threatened or endangered under the ESA, and that authority resides in CDFW to conserve resident species of fish and wildlife determined by the State or NMFS to be threatened or endangered;

WHEREAS, CDFW and NMFS both have limited funds with which to conserve such species, and therefore must be effective and efficient in using such funds;

WHEREAS, CDFW and NMFS believe implementation of the ESA and CESA and conservation of resident threatened and endangered species in the State will benefit from the continued coordination between the Fishery Agencies in developing recommendations and implementing actions within the State consistent with the ESA and within the constraints of State and Federal law;

November 21, 2016

NOW THEREFORE, in consideration of the above recitals, the Fishery Agencies enter into this Agreement.

Section III. Definitions

A. This subsection defines key terms in this Agreement. For the purposes of this Agreement:

1. “Conference” means a process of early interagency cooperation involving informal or formal discussions between a Federal agency and NMFS pursuant to section 7(a) (4) of ESA regarding the likely impact of an action on species (as defined herein) proposed for listing under the ESA or proposed critical habitat.
2. “Coordinate” means a request on the part of the responsible Fishery Agency for assistance in administering the ESA or CESA, as further specified in this Agreement, and the provision of such assistance when and as appropriate by the other Fishery Agency.
3. “Dually listed” refers to species included in the Federal List of Endangered and Threatened Wildlife at 50 CFR 17.11 and in the State lists of endangered, threatened, or rare species at 14 CCR 670.2 or 670.5. Dually listed species currently under CDFW and NMFS’s jurisdiction are: Central California Coast coho salmon Evolutionarily Significant Unit, Southern Oregon Northern California Coast coho salmon Evolutionarily Significant Unit, Sacramento Winter-run Chinook salmon Evolutionarily Significant Unit, Central Valley Spring-run Chinook salmon and Guadalupe Fur Seal. These species may change over time with state or federal listing or delisting.
4. “Experimental population” means any population designated as “experimental” under section 10(j) of the ESA and authorized by the Secretary of Interior for release outside the current range of such species if the population is wholly separate geographically from non-experimental populations of the same species, and NMFS determines that such release will further the conservation of such species.
5. “Liaison” means a designated representative of the respective Fishery Agency.
6. “Participate” means that to the extent feasible given availability of staff or funding and other workload priorities, each Fishery Agency will support the other Fishery Agency in implementing this Agreement.
7. “Proposed” refers to any species under the jurisdiction of NMFS that is proposed in the Federal Register to be listed under section 4 of ESA.

8. “Proposed critical habitat” means habitat proposed in the Federal Register to be designated or revised as critical habitat under Section 4 of the ESA.
9. “Species” means any species or subspecies of fish or wildlife, and any distinct vertebrate population segment of any species that interbreeds when mature.
10. “Wildlife” means all species or subspecies of invertebrate and vertebrate animals that are resident in the State, including migratory and extirpated species.

Section IV. Roles and Responsibilities

Principal responsibility for implementing each of the sections below resides with NMFS West Coast Region’s Assistant Regional Administrators for Protected Resources, the Central Valley Office, the California Coastal Office, and CDFW’s Chief Deputy Director.

- A. ESA Section 4 Determination of Endangered Species and Threatened Species
 1. Listing, Reclassification, and Critical Habitat Designation – ESA Section 4(a)
 - a. Respective liaisons for this subject are NMFS West Coast Region’s Assistant Regional Administrator for Protected Resources and CDFW’s Deputy Director, Wildlife and Fisheries Division. These designated liaisons may delegate implementation of tasks to appropriate programs and staff.
 - b. NMFS agrees to inform CDFW of the development of listing and reclassification rules and critical habitat rules and, consistent with applicable federal law, including the Administrative Procedures Act (hereafter, “APA”), and with statutory and administrative timelines, to provide opportunities for CDFW to provide technical assistance to NMFS, and to review and comment on the scientific information relevant to such rules during public hearings and comment periods, and at other times as allowable and appropriate.
 - c. Upon request by NMFS, CDFW agrees to provide NMFS with any available scientific information, including spatial data, or other information relevant to the preparation of: 1) a 12-month finding, proposed rule, or final rule to list or reclassify a species as endangered or threatened, or 2) a proposed rule or final rule to designate or revise critical habitat.
 - d. NMFS agrees to provide CDFW with notice of and an electronic link to any 12 month finding, proposed or final listing or critical habitat rule, and other information and associated Federal Register notices on

www.regulations.gov within 30 days of such finding or proposed or final rule.

- e. Upon request by CDFW, NMFS agrees to provide CDFW with any available scientific information, including spatial data, or other information relevant to the preparation of a status review of a CESA candidate species. CDFW agrees to provide NMFS with a copy of any status review, recommendation to the State of California's Fish and Game Commission (hereafter, "Commission") regarding listing, and notice of proposed rulemaking to list a species under CESA within 30 days of such review, recommendation, or notice.

2. Petition Management – ESA Section 4(b)

- a. Respective liaisons for this subject are NMFS West Coast Region's Assistant Regional Administrator for Protected Resources and CDFW's Deputy Director, Wildlife and Fisheries Division. These designated liaisons may delegate implementation of tasks to appropriate programs and staff.
- b. NMFS agrees to notify CDFW of, and to provide a copy of any petition submitted to NMFS to list a species resident in California, and to provide CDFW with notice of all 90 day findings and an electronic link to the findings on www.regulations.gov within 30 days of such findings. NMFS also agrees to notify CDFW when initiating any species status review, and to provide an electronic link to the notice in the Federal Register.
- c. CDFW agrees to provide to NMFS all petitions to list any species within the jurisdiction of NMFS that are submitted to the Commission and petition evaluations within 30 days of the date the petition or evaluation is provided to the Commission.

3. 5-Year Status Reviews – ESA Section 4(c)(2)

- a. Respective liaisons for this subject are NMFS West Coast Region's Assistant Regional Administrators for Protected Resources, the Central Valley Office, the California Coast Office, and CDFW's Deputy Director, Wildlife and Fisheries Division. These designated liaisons may delegate implementation of tasks to appropriate programs and staff.
- b. NMFS agrees to request relevant scientific information, including spatial data, and other information from CDFW during the development of 5-year status reviews under CESA.

- c. CDFW agrees to request relevant scientific information, including spatial data, and other information from NMFS during development of 5-year status reviews under ESA.
- d. NMFS agrees to alert CDFW on anticipated changes to the listing status of salmonid species prior to the final release of a 5-Year Status Review.

4. Protective Regulations - ESA Section 4(d)

- a. Respective liaisons for this subject are NMFS West Coast Region's Assistant Regional Administrator for Protected Resources and CDFW's Deputy Director, Wildlife and Fisheries Division. These designated liaisons may delegate implementation of tasks to appropriate programs and staff.
- b. CDFW agrees to the extent feasible to: 1) provide NMFS with any relevant scientific information, including spatial data, for use in preparing Section 4(d) rules; 2) provide technical assistance to NMFS, as appropriate, in developing Section 4(d) rules, contingent on the availability and expertise of CDFW staff; 3) submit comments on proposed Section 4(d) rules during public comment periods; and 4) participate in any public hearings held in the State on proposed Section 4(d) rules.
- c. NMFS agrees to fully consider CDFW's comments on any proposed Section 4(d) rules, and in particular, any comments from CDFW indicating that a proposed Section 4(d) rule will likely conflict with existing State laws or regulations for the protection of fish and wildlife resources.
- d. NMFS agrees to provide CDFW with notice of and an electronic link to any proposed or final Section 4(d) rule, and other relevant information and associated Federal Register notices posted on www.regulations.gov.

5. Recovery Plan Development and Implementation – ESA Section 4(f)(1)

- a. Respective liaisons for this subject are NMFS West Coast Region's Assistant Regional Administrators for Protected Resources, the Central Valley Office, the California Coast Office, and CDFW's Deputy Director, Wildlife and Fisheries Division. These designated liaisons may delegate implementation of tasks to appropriate programs and staff.
- b. NMFS will provide CDFW the opportunity to participate in the development or revision of recovery plans under ESA.
- c. NMFS agrees to appoint qualified CDFW personnel, when available, as members of and/or as policy and technical consultants, to recovery teams, including technical teams, implementation teams, stakeholder teams, and

any other recovery advisory teams formed or appointed by NMFS. In the event that recovery plans are developed without establishment of a recovery team, NMFS will solicit comment from CDFW.

- d. CDFW agrees to participate with NMFS in implementing measures set forth in recovery plans, particularly those related to landscape-level conservation.
- e. CDFW agrees to appoint qualified NMFS personnel, when available, as members of and/or as policy and technical consultants, to recovery teams, including technical teams, implementation teams, stakeholder teams, and any other recovery advisory teams formed or appointed by CDFW. In the event that recovery plans are developed without the establishment of a recovery team, CDFW will solicit comment from NMFS.
- f. NMFS and CDFW agree to encourage other agencies and partners to incorporate into their planning and projects those recovery actions and conservation actions described in Federal and State recovery plans under ESA and CESA.

6. Monitoring of Delisted Species – ESA Section 4(g)

- a. Respective liaisons for this subject are NMFS West Coast Region's Assistant Regional Administrators for Protected Resources, the Central Valley Office, the California Coast Office, and CDFW's Deputy Director, Wildlife and Fisheries Division. These designated liaisons may delegate implementation of tasks to appropriate programs and staff.
- b. CDFW and NMFS agree to participate in planning, management, and monitoring of delisted species.

B. Cooperative Agreements - ESA Section 6(c)

1. Respective liaisons for this subject are NMFS West Coast Region's Assistant Regional Administrator for Protected Resources and CDFW's Deputy Director, Wildlife and Fisheries Division. These designated liaisons may delegate implementation of tasks to appropriate programs and staff.
2. CDFW and NMFS agree to coordinate annually to establish priorities that address those endangered and threatened species within the State that the Fisheries Agencies agree are most urgently in need of conservation programs for use of funds allocated to the State under Section 6 of the ESA.
3. CDFW agrees to provide all available take reporting data collected under CDFW's conservation program for the conservation of endangered and threatened wildlife in California to NMFS's representative designated in the

Cooperative Agreement as part of the annual renewal of the Section 6 Cooperative Agreement. This information will identify any utilized federal grant support and NMFS research or recovery permitting coverage for these activities. NMFS agrees to notify CDFW if overlapping reporting is occurring, and to work with CDFW to streamline the reporting process.

C. Federal Agency Actions and Consultations - ESA Section 7

1. Section 7 Consultations and Conferences
 - a. Respective liaisons for this subject are NMFS West Coast Region's Assistant Regional Administrators for Protected Resources, the Central Valley Office, the California Coast Office, and CDFW's Deputy Director, Ecosystem Conservation Division. These designated liaisons may delegate implementation of tasks to appropriate programs and staff.
 - b. At the request of NMFS, CDFW agrees to provide NMFS with available scientific information, including spatial data, relevant to ongoing or prospective Section 7 consultations and conferences on dually listed species.
 - c. At the invitation of the Federal action agency and subject to the concurrence of the Federal applicant, if any, CDFW may agree to be involved in Section 7 consultations and conferences on dually listed species. Such involvement is for the express purpose, to the extent possible, of reconciling any potential conflicts between recommendations from NMFS and CDFW. NMFS retains the right to confer with CDFW on consultations of significance. It is understood by CDFW and NMFS that involvement by CDFW does not affect the regulatory timelines for completion of consultations or conferences set forth in the ESA and its implementing regulations.
 - d. To the extent practicable, NMFS agrees to recommend to the Federal action agency that the action agency invite CDFW to participate in Section 7 consultations and conferences when the subject species are dually listed and the consultation has some significance to these dually listed species. NMFS will recommend to the Federal action agency that the agency copy CDFW on initiation letters. If NMFS sends a letter to the action agency acknowledging the initiation of consultation, it will copy CDFW on such letter.
 - e. To the extent practicable, CDFW agrees to invite NMFS to participate in any section 2081 permit development meetings for dually listed species.
 - f. NMFS agrees to provide an electronic copy of all final biological and conference opinions on the NMFS Public Consultation Tracking System

at <https://pcts.nmfs.noaa.gov/pcts-web/homepage.pcts> within a few days of being signed.

- f. CDFW will provide an electronic copy of any Consistency Determination or Incidental Take Permit to NMFS for dually listed species.

2. Programmatic Consultations on Federal Grants to CDFW

- a. Respective liaisons for this subject are NMFS West Coast Region's Assistant Regional Administrators for Protected Resources, the Central Valley Office, the California Coast Office, and CDFW's Deputy Director, Wildlife and Fisheries Division. These designated liaisons may delegate implementation of tasks to appropriate programs and staff.
- b. As an alternative to standard informal or formal consultations for individual Wildlife and Sport Fish Restoration Program grants, NMFS may agree to conduct intra-Service consultations at the programmatic level on multiple CDFW grants within a specified regional planning area or specified actions, and for a specified duration for individual or multiple species.

D. International Cooperation – ESA Section 8

1. Wildlife Preservation in the Western Hemisphere

- a. Respective liaisons for this subject are NMFS West Coast Region's Assistant Regional Administrator for Protected Resources and CDFW's Chief, Fisheries Branch. These designated liaisons may delegate implementation of tasks to appropriate programs and staff.
- b. CDFW and NMFS agree to coordinate with regard to activities planned or conducted with Mexico for dually listed species which also exist in Mexico, and to provide each other with copies of work or study proposals, information, and reports regarding such work.

E. Prohibited Acts - ESA Section 9

1. Law Enforcement

- a. Respective liaisons for this subject are NMFS West Coast Region Special Agent in Charge and CDFW's Chief of Law Enforcement Division. These designated liaisons may delegate implementation of tasks to appropriate programs and staff.
- b. CDFW and NMFS mutually agree to implement the most recent Cooperative Enforcement Agreement between the United States

Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Office of Law Enforcement, and State of California, Natural Resources Agency, Department of Fish and Wildlife, Law Enforcement Division.

F. ESA Section 10 Exceptions

1. Permits – ESA Section 10(a)(1)(A)
 - a. Respective liaisons for this subject are NMFS West Coast Region's Assistant Regional Administrators for Protected Resources, the Central Valley Office, the California Coast Office, and CDFW's Deputy Director, Ecosystem Conservation Division.
 - b. When issuing an ESA 10(a)(1)(a) permit for dually listed species, NMFS will include a notice indicating that an appropriate permit from CDFW may be required.
 - c. When issuing a permit or memorandum of understanding for dually listed species under Section 2081(a) of the Fish and Game Code, CDFW will include a notice indicating that an appropriate permit from NMFS may be required.
 - d. When issuing a 10(a)(1)(a) permit for species that are dually listed, NMFS will require the permittee to submit copies of all reports to CDFW.
 - e. CDFW will provide an electronic copy of any Consistency Determination or Incidental Take Permit to NMFS for dually listed species. When issuing an Incidental Take Permit for a dually listed species, CDFW will require the permittee to submit copies of all reports to NMFS.
 - f. When finalizing a Lake or Streambed Alteration Agreement, CDFW will advise the applicant as follows: "This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with, or obtaining any other permits or authorizations that might be required under, other federal, state, or local laws or regulations before beginning the project or an activity related to it. For example, if the project causes take of a species listed as threatened or endangered under the federal Endangered Species Act (ESA), such take will be unlawful under the ESA absent a permit or other form of authorization from the U.S. Fish and Wildlife Service or National Marine Fisheries Service."
2. Conservation Planning – ESA Section 10(a)(1)(B)

- a. Respective liaisons for this subject are the NMFS West Coast Region's Assistant Regional Administrators for the California Coastal Office and Central Valley Office and CDFW's Deputy Director, Ecosystem Conservation Division.
- b. Subject to the consent of the permit applicant, NMFS and CDFW agree to coordinate in all Candidate Conservation Agreement planning, Safe Harbor planning, Natural Community Conservation Planning and Habitat Conservation Planning as appropriate and subject to the availability of funding and staffing resources.

3. Experimental Populations - ESA Section 10(j)

- a. Respective liaisons for this subject are the NMFS West Coast Region's Assistant Regional Administrators for the California Coastal Office and Central Valley Office and CDFW's Deputy Director, Wildlife and Fisheries Division. Designated liaisons may then delegate implementation of tasks to appropriate programs and staff.
- b. NMFS agrees to inform CDFW of the development of any experimental population rule, and consistent with the APA, ESA, and other applicable Federal laws, to provide opportunities for CDFW's involvement in public reviews of such rules, including public hearings and comment periods.
- c. CDFW agrees to provide NMFS with any available scientific information, including spatial data, or other relevant information for use in preparing proposals and final rules for designating experimental populations of listed species.
- d. CDFW agrees, to the extent feasible, to support amendments to CESA for specific locations and populations to provide an ESA Section 10(j) equivalent provision and provide comments to NMFS on proposed rules for designating experimental populations of dually listed species during the public comment period and to attend and participate in any public hearings in the State on such proposed rules.
- e. NMFS agrees to solicit and consider the views of CDFW when considering the development of an experimental population rule for a species.
- f. NMFS agrees to provide CDFW with notice of and an electronic link to any proposed or final 10(j) rule, and other relevant information and associated Federal Register notices posted on www.regulations.gov.

Section V. Terms of the Agreement

1. CDFW and NMFS agree to the following coordination meetings.
 - a. NMFS West Coast Region's Assistant Regional Administrators for Protected Resources, the Central Valley Office, the California Coast Office, and CDFW's Deputy Director, Wildlife and Fisheries shall organize and conduct coordination meetings each year and meet regularly and often on issues associated with dually listed species.
 - b. The minutes of these meetings shall provide a written summary of implementation and accomplishments. Copies of the minutes shall be disseminated within five calendar days of each meeting, to appropriate staff within CDFW and NMFS.
2. Implementation of any specific action under this Agreement is contingent upon the availability of appropriated funds and the availability of staffing resources. With regard to NMFS funding, this Agreement is also subject to the requirements of the Anti-Deficiency Act. Nothing in this Agreement will be construed by the Fisheries Agencies to require the obligation, appropriation, or expenditure of any money from the United States Treasury. The Fisheries Agencies acknowledge that NMFS will not be required under this Agreement to expend any federally-appropriated funds unless or until an authorized official of NMFS affirmatively acts to commit to such expenditures as evidenced in writing.
3. Whenever a specific section of this Agreement provides for the transmittal of information or documents between NMFS and CDFW, such information or documents shall be transmitted to the liaison designated in that section for the recipient Fishery Agency. Information and document exchanges between the Fishery Agencies shall be in full compliance with, and in consideration of, all State and Federal laws pertaining to public records.
4. This Agreement shall be effective upon execution by NMFS and CDFW as of the last date below.
5. To carry out its intent, this Agreement may be supplemented by subsequent agreements between NMFS and CDFW to allow for specific funding authorities, and may be modified at any time by letter signed by CDFW and NMFS.
6. This Agreement is subject to termination by either NMFS or CDFW upon submission of a written 60 calendar-day termination notice to the other Fishery Agency.

7. This Agreement is non-binding and establishes no duty or obligation on CDFW or NMFS. This Agreement is not a rule or regulation. This Agreement is not a delegation of authority of either NMFS or CDFW. This Agreement is not intended to, and does not create or establish, any substantive or procedural right, benefit, trust responsibility, claim, cause of action enforceable at law, or equity in any administrative or judicial proceeding by either Fishery Agency or by a third party against either Fishery Agency or against any employee, officer, agent, or representative of either Fishery Agency.
8. All written notices concerning modifications to this Agreement shall be delivered in person or sent by certified mail, return receipt requested, to the Fishery Agencies as follows:

For CDFW:

Chief Deputy Director
California Department of Fish and Wildlife
1416 Ninth Street, 12th Floor
Sacramento, CA 95814

For NMFS:

Regional Administrator
National Marine Fisheries Service
West Coast Region
7600 Sand Point Way N.E.
Seattle, Washington 98115

Section VI. Approvals

NATIONAL MARINE FISHERIES SERVICE, WEST COAST REGION

Regional Administrator

Date`

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

Director

Date

November 21, 2016