



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

NATIONAL MARINE FISHERIES SERVICE
West Coast Region
777 Sonoma Avenue, Room 325
Santa Rosa, California 95404-4731

August 3, 2022

Refer to NMFS No: WCR-2015-3755

David K. White
California Supervisor
NOAA Office of Habitat Conservation, Restoration Center
777 Sonoma Avenue, Suite 325
Santa Rosa, California 95404

James Mazza
Chief, Regulatory Division
U.S. Department of the Army
San Francisco District, U.S. Corps of Engineers
450 Golden Gate Avenue, 4th Floor, Suite 0134
San Francisco, California 94102

Re: Revised Incidental Take Statement for the Endangered Species Act Sect 7(a)(2) June 14, 2016, Biological Opinion for the Program for Restoration Projects within the NOAA Restoration Center's Central Coastal California Office Jurisdictional Area

Dear Mr. White and Mr. Mazza:

NOAA's National Marine Fisheries Service (NMFS) has received a request from the NOAA Restoration Center (Pecharich, 2022) to add additional language to the incidental take statement that NMFS issued with the 2016 Programmatic Biological Opinion for Restoration Projects within the NOAA Restoration Center's Central Coastal California Office Jurisdictional Area in California (NMFS 2016). The purpose of the additional language would be to facilitate efficient processing of restoration projects undergoing California Department of Fish and Wildlife's environmental review under the California Endangered Species Act.

NMFS has reviewed your request and finds that the additional language would not change, as described in 50 CFR 402.14(i): (1) the amount or extent of incidental take described in the incidental take statement; (2) the incidental take statement's reasonable and prudent measures; (3) the incidental take statement's terms and conditions; or (4) the reporting requirements described in the incidental take statement. Therefore, NMFS has added the following language to the first section of the incidental take statement:

The take exemption conferred by this incidental take statement is based upon the proposed action occurring as described in the biological opinion and in more detail in the NOAA RC's Biological Assessment.



The revised incidental take statement is enclosed and replaces the original. Only Section 2.8, Incidental Take Statement, of the original consultation document has been changed. The NOAA Restoration Center and the U.S. Army Corps of Engineers must substitute the revised incidental take statement for the original incidental take statement; the original incidental take statement is no longer in effect. This change to the incidental take statement is fully consistent with the analysis in the biological opinion, and thus reinitiation of consultation is not warranted. No change has been made to the body of the biological opinion and the opinion remains in effect.

Please contact Eric Shott at (707)575-6089 or Eric.Shott@noaa.gov if you have any questions about the additional language in the updated incidental take statement. If you require other information regarding this biological opinion and incidental take statement, please contact Tom Daugherty at (707)468-4057 or Tom.Daugherty@noaa.gov.

Sincerely,



Alecia Van Atta
Assistant Regional Administrator
California Coastal Office

Enclosure: Revised Incidental Take Statement for WCR-2015-3755

cc: Joe Pecharich, NOAA Restoration Center
William M. Connor, Army Corps of Engineers
Katerina Galacatos, Army Corps of Engineers
NMFS File No: 151422WCR2015SR00285

REFERENCE

Pecharich, 2022. Email from Joe Pecharich (NOAA Restoration Center) to Eric Shott (NMFS CCO ESA Section 7 Coordinator) requesting the addition of one sentence to the incidental take statement for the NOAA Restoration Center's Santa Rosa NMFS office programmatic biological opinion.

NMFS, 2016. Endangered Species Act Section 7(a)(2) Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the Program to fund, and/or permit restoration projects within the NOAA Restorations Center's Central Coastal California Office jurisdictional Area in California. WCR-2015-3755. 102 pages. June 14.

Endangered Species Act (ESA) Section 7(a)(2) Revised Incidental Take Statement

Program to fund, and/or permit restoration projects within the NOAA Restoration Center's
Central Coastal California Office jurisdictional area in California

NMFS Consultation Number: WCR-2015-3755

Action Agency: NOAA Office of Habitat Conservation, Restoration Center
U.S. Army Corps of Engineers, San Francisco District

2.8. Incidental Take Statement

Section 9 of the ESA and Federal regulations pursuant to section 4(d) of the ESA prohibit the take of endangered and threatened species, respectively, without a special exemption. "Take" is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. "Harm" is further defined by regulation to include significant habitat modification or degradation that actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, or sheltering (50 CFR 222.102). "Incidental take" is defined by regulation as takings that result from, but are not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or applicant (50 CFR 402.02). Section 7(b)(4) and section 7(o)(2) provide that taking that is incidental to an otherwise lawful agency action is not considered to be prohibited taking under the ESA if that action is performed in compliance with the terms and conditions of this incidental take statement.

The take exemption conferred by this incidental take statement is based upon the proposed action occurring as described in the biological opinion and in more detail in the NOAA RC's Biological Assessment.

The measures described below are nondiscretionary, and must be undertaken by RC and the Corps so that they become binding conditions of any grant or permit issued for the exemption in section 7(o)(2) to apply. The RC and Corps have a continuing duty to regulate the activity covered by this incidental take statement. If the RC or Corps (1) fails to assume and implement the terms and conditions or (2) fails to require an applicant to the Program to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, the RC or the Corps must report the progress of the action and its impact on the species to NMFS as specified in the incidental take statement (50 CFR §402.14(i)(3)).

2.8.1. Amount or Extent of Take

In the biological opinion, NMFS determined that incidental take would occur as follows:

NMFS expects the proposed project will result in incidental take of listed CCC coho salmon, CC Chinook salmon, NC steelhead, CCC steelhead and SCCC steelhead on an annual basis. Juvenile coho salmon, steelhead and to a lesser extent stream-type juvenile Chinook salmon will be harmed, injured, or killed from the dewatering and fish relocating activities at the project sites. Specifically, incidental take is expected to be in the form of capture during dewatering and fish relocation activities. NMFS expects no more than 3 percent of the juvenile salmon and steelhead captured will be injured or killed each year. For each of the steelhead DPSs which can have large numbers of young of the year fish present during dewatering and relocation activities we expect up to 4000 juvenile steelhead to be captured and relocated and up to 120 juveniles (most will be young of the year) injured or killed during each year of the program. Much lower numbers of juvenile CCC coho salmon and CC Chinook salmon are expected at restoration sites and based on past dewatering and relocation information we expect 300 CCC coho salmon to be captured and relocated and the loss of 9 CCC coho salmon and the capture and relocation of 100 CC Chinook salmon juveniles, and 3 to be injured or killed during each year of the Program.

2.8.2. Effect of the Take

In the biological opinion, NMFS determined that the amount or extent of anticipated take, coupled with other effects of the proposed action, is not likely to result in jeopardy to the species or destruction or adverse modification of critical habitat.

2.8.3. Reasonable and Prudent Measures

“Reasonable and prudent measures” are nondiscretionary measures that are necessary or appropriate to minimize the impact of the amount or extent of incidental take (50 CFR 402.02).

- a. Measures shall be taken to minimize the amount or extent of incidental take of listed salmonids resulting from fish relocation, dewatering, or instream construction activities.
- b. Measures shall be taken to ensure that individual restoration projects authorized annually through the Program will minimize take of listed salmonids, monitor and report take of listed salmonids, and to obtain specific project information to better assess the effects and benefits of salmonid restoration projects authorized through the Program.
- c. Measures shall be taken to handle or dispose of any individual CCC coho salmon, CC Chinook salmon, NC steelhead, CCC steelhead, or SCCC steelhead actually killed.

2.8.4. Terms and Conditions

The terms and conditions described below are non-discretionary, and the RC and Corps or any applicant must comply with them in order to implement the reasonable and prudent measures (50 CFR 402.14). The RC and Corps or any applicant has a continuing duty to monitor the impacts of incidental take and must report the progress of the action and its impact on the species as specified in this incidental take statement (50 CFR 402.14). If the entity to whom a term and condition is directed does not comply with the following terms and conditions, protective coverage for the proposed action would likely lapse.

- a. The following terms and conditions implement reasonable and prudent measure 1:

Measures shall be taken to minimize the amount or extent of incidental take of listed salmonids resulting from fish relocation, dewatering, or instream construction activities:

1. Fish relocation data must be provided annually as described in Term and Condition 2b (below). Any injuries or mortality from a fish relocation site that exceeds three percent¹ of a listed species shall be reported to the nearest NMFS office within 48 hours and relocation activities shall cease until a RC biologist is on site to supervise the remainder of relocation activities.

- b. The following terms and conditions implement reasonable and prudent measure 2:

Measures shall be taken to ensure that individual restoration projects authorized annually through the Program will minimize take of listed salmonids, monitor and report take of listed salmonids, and to obtain specific project information to better account for the effects and benefits of salmonid restoration projects authorized through the Program.

1. In order to monitor the impact and to track incidental take of listed salmonids, the RC and/or the Corps must annually submit to NMFS a report of the previous year's restoration activities. The annual report shall include a summary of the specific type and location of each project, stratified by individual project, watershed, affected species and ESU/DPS. The report shall include the following project-specific summaries:

- Summary detailing fish relocation activities, including the number and species of fish relocated and the number and species injured or killed. Any capture, injury, or mortality of adult salmonids will be noted in the monitoring data and report. Any injuries or mortality from a fish relocation site that exceeds three percent of the affected listed species shall have an explanation describing why.
- The number and type of instream structures implemented within the stream channel.

¹ Only when injury or mortality exceeds 10 individuals of the affected species, to minimize the need to report when only a small number of listed species are injured or killed from a small total capture size.

- The length of streambank (feet) restored or planted with riparian species.
- The number of culverts replaced or repaired, including the number of miles of restored access to unoccupied salmonid habitat.
- The distance (miles) of road decommissioned.
- The distance (feet) of aquatic habitat disturbed at each project site.

This report shall be submitted annually by March 1 to the North-Central Coast NMFS office:

National Marine Fisheries Service
North-Central Coast Office
777 Sonoma Avenue, Room 325
Santa Rosa, California 95404.

- c. The following terms and conditions implement reasonable and prudent measure 3:

Measures shall be taken to handle or dispose of any individual CCC coho salmon, CC Chinook salmon, NC, CCC, or SCCC steelhead actually taken (mortality).

1. All steelhead, Chinook salmon, and coho salmon mortalities must be retained, placed in an appropriately sized whirl-pak or zip-lock bag, labeled with the date and time of collection, fork length, location of capture, and frozen as soon as possible. Frozen samples must be retained until specific instructions are provided by NMFS.