



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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CHARLTON H. BONHAM, Director



July 13, 2015

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BOARD OF FORESTRY AND FIRE PROTECTION

Chair J. Keith Gilles, Ph.D.
California Board of Forestry and Fire Protection
1416 Ninth Street
P.O. Box 944246
Sacramento, CA 94244-2460

Dear Dr. Gilles:

Subject: NATIONAL MARINE FISHERIES SERVICE PROPOSED RULE PLEAD TO FACILITATE APPLICATION OF ENDANGERED SPECIES ACT SECTION 10(j) IN WATERSHEDS ABOVE RIM DAMS

California Department of Fish and Wildlife (CDFW) staff has reviewed the July 6, 2015 letter addressed to you from Ms. Maria Rea, Assistant Regional Administrator, National Marine Fisheries Service (NMFS), proposing changes to the California Forest Practice Rules (FPRs) to facilitate application of Section 10(j) of the Endangered Species Act (ESA). The proposed rule plead is intended to address potential impediments to proposed recovery actions under the authority of ESA Section 10(j) involving reintroduction of listed experimental populations of salmonids.

CDFW supports NMFS's proposed changes to the FPRs as they would help ensure successful implementation of actions necessary to conserve and promote recovery of selected Central Valley salmon and steelhead listed pursuant to ESA and/or the California Endangered Species Act (CESA). These actions include reintroduction to historic spawning and rearing habitats above rim dams of populations of these native species that NMFS has designated as "experimental" pursuant to ESA Section 10(j). Some of these habitats are on private timberlands.

One proposed change to the FPRs appears likely to address concerns reportedly expressed by some forest landowners that the Anadromous Salmonid Protection (ASP) rules would extend to watersheds where the experimental salmonid populations would be reintroduced. The ASP rules were established to help protect listed anadromous salmonids in "watersheds with listed salmonids," as defined in the FPRs, from the effects of timber operations and they are more restrictive than the FPRs applied to timber operations in watersheds without listed salmonids. The proposed change to the FPRs would clarify that the ASP rules do not apply to reaches above large dams and natural barriers that preclude anadromous fish passage. Through this proposed change to the FPRs, the experimental salmonid populations would be reintroduced above large rim dams, where the ASP rules would not apply.

Aside from clarifying that the ASP rules would not apply where the experimental populations would be reintroduced, the proposed plead also includes a change to subsection (d) of FPR Section 898.2, "Special Conditions Requiring Disapproval of Plans." This FPR section states the director of the California Department of Forestry and Fire Protection (CalFire) shall disapprove a timber harvesting plan (THP) whose implementation would result in a "taking" or finding of jeopardy of a species listed pursuant to ESA or CESA but includes an exception when the taking is incidental and authorized by a wildlife agency. Again, certain forest landowners are reportedly concerned that CalFire would not approve THPs resulting in unauthorized incidental take of listed anadromous

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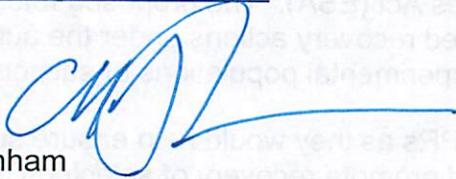
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salmonids reintroduced as experimental populations within watersheds that include lands they manage. This proposed change would provide the director of CalFire an additional exception, allowing approval of THPs resulting in incidental take of one or more individuals of an anadromous salmonid species in an Experimental Population under Section 10(j) of ESA and corresponding regulations under Section 4(d) of ESA, when state and federal agencies determine no further authorizations are necessary under CESA or ESA. This change would appear to address forest landowners' concerns.

Assuming the Board of Forestry and Fire Protection (BOF) adopts the proposed changes to the FPRs and experimental populations of listed anadromous salmonids are reintroduced, CDFW expects NMFS will ensure robust monitoring and evaluation programs will be implemented to determine how land use practices and the regulatory regimes to which they are subject affect meeting the recovery objectives of the reintroductions. For private timberlands, such programs will require strong support and commitment at least by the BOF, CalFire, NMFS and CDFW.

Should you have any questions and/or would like to discuss our input, please contact Environmental Program Manager William Condon with the Department's Timberland Conservation Program in the Habitat Conservation Planning Branch, at (916) 651-3110 or by email at William.Condon@wildlife.ca.gov.

Sincerely,



Charlton Bonham
Director

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