

**HOOPA VALLEY TRIBAL COMMENTS ON
FMP Amendment 15 (*de minimis* fisheries)**

The Hoopa Valley Tribe (Tribe) owns a reserved property right to the fishery of Klamath Basin. The Federal Government, as trustee, is obligated to ensure that this fishery is sustained and meaningful. To that end, the Tribe has worked with the executive, legislative, and judicial branches of the federal government to protect and rehabilitate the fishery. These efforts have included working with co-mangers in development of restoration programs for Trinity and Klamath Rivers, co-management of the federal mitigation hatchery on Trinity River, and participation in fishery management forums.

The Tribe remains a strong advocate for restoration of the Trinity and Klamath Rivers. In particular, the Tribe has worked towards the full implementation of the Central Valley Project Improvement Act (Public Law 102-575). Section 3406(b)23 of that Act and the Trinity River Fish and Wildlife Management Act (Public Law 104-143), requires restoration of Hoopa Valley Tribal fishery to pre-Trinity-dam levels and in addition provide some 63,000 naturally produced fall chinook adult spawners.

The Tribe was a participant in establishing specific conservation objectives for Klamath River Fall Chinook (KRFC) when in the mid 1980s the Klamath River Salmon Management Group (later KFMC) worked with PFMC to adopt a harvest rate management approach coupled with a 35,000 natural chinook escapement floor for adult spawners in every year. One of the fundamental concerns then as now is the status of sub-basin natural spawning stocks, the building blocks of natural production in the basin. An objective of the escapement floor was to minimize the probability of prolonged periods of low productivity of naturally spawning chinook. The alternatives presently developed in Amendment 15 Environmental Assessment contemplate fisheries that would compromise these sub-basin stocks.

The Tribe has continued its active participation in the fisheries management process through its membership in the Klamath Fishery Management Council (KFMC) and the PFMC. We are well aware of the implications in 2005 and 2006 of a reduced abundance of Klamath River Fall Chinook (KRFC) and requirements of PFMC's Fishery Management Plan (FMP). Under the FMP, fisheries could not have been allowed in 2006, when at the outset of season development it was determined the 35,000 floor would not be achieved absent further fishing.

Recognizing the emergent dilemma in fall of 2005, the KFMC acted unanimously to proffer a definition for *de minimis* fisheries under the FMP. However, the management flexibility intended by the KFMC's allowance for a *de minimis* fishery was consumed by marine fisheries in the fall of 2005 wherein 6,000 adult Klamath chinook were harvested which would otherwise been partially available under *de minimis* fishing in the summer of 2006. These so called "credit card fisheries" provide an early opportunity for marine fisheries to access Klamath chinook which would otherwise over-winter in the ocean and not contribute to the river run that autumn.

In summary, the Tribe finds that the Environmental Assessment for Amendment 15 is inadequate in that it fails to explore fully a breadth of alternatives for de minimis fisheries, which would conform with the accepted definition of this Latin expression (“of minimum importance” or “trifling”). Notably, the absence of the KFMC recommendation for de minimis fisheries leaves a narrowed range of alternatives lacking appropriate conservation safeguards. Further, we have a major concern over the significant risk of the alternative de minimis fisheries would pose to natural sub-basin stocks. Analysis of this amendment also illustrates that results of de minimis fisheries would conflict with legislative requirements to improve the Hoopa Valley Tribal fishery and recover natural spawning fish stocks to pre-Trinity River Dam levels. As a result, the Tribe finds that as drafted, all alternatives (with the exception of the ‘no-action’ alternative), may have significant implications to the fiduciary duty of the federal government to protect and make meaningful our reserved fishing right. Lacking consideration of the KFMC recommendation, the Tribe supports the ‘no action’ alternative’.

Summary of Key Issues of Concern:

KFMC definition for de minimis fisheries was initially supported by HVT however was later eliminated from consideration by PFMC in A-15 alternatives. Whereas the 5% fixed cap alternative is closest in terms of potential spawner reduction rate (12.5% compared to a maximum of 10% under KFMC definition), this alternative fails to encompass the other fundamental feature of the KFMC definition wherein the spawner reduction rate would be variable, ranging from 10% at natural spawning stock of approximately 39,000 down to 0% as a linear function of stock abundance. Further, the alternatives fail to offer safeguards to protect the stock from repeated escapements below the spawner floor (e.g. three or more successive years of de minimis fisheries resulting in escapements below the conservation standard of 35,000 adult fall chinook) which was, in part, the intent of the sliding scale feature of the KFMC definition. Additionally the Klamath River Technical Advisory Team (KRTAT) definition called for an annual review of any prior de minimis fishery to explore if fishing was the cause for declined abundance prior to enabling additional de minimis fishing.

Incongruity of A-15 with other legal mandates. The Stochastic Stock Recruit Model (SSRM), presently shows a range of Tribal harvest of between 50,458 and 51,095 adult fall chinook on average for a 40 year simulation under all alternatives to de minimis fisheries. On the 5-year horizon, harvest would average 33,010 to 33,295. However, in an independent estimate (recently presented to the Central Valley Project Program Activity Review) of this fishery with a restored Trinity River average expected yield would approach 73,000 Trinity River produced fall chinook to Klamath Basin Tribes with reserved fishing rights. This level of expected benefit of a restored Trinity River mandated by P.L. 102-575 and P.L. 104-143, does not include the additional contributions to Tribal fisheries of fall chinook produced from the remainder of the Klamath system.

Average Tribal harvest is reduced under any de minimis scenario. The model results for alternatives to de minimis fishing suggest overall increase in catch by non-Tribal fisheries on average when contrasted with status quo. However, each of the modeled alternatives demonstrated a decrease in average Tribal harvest over the status quo FMP (pg 63 of EA).

Unrealistic model assumptions. The Stochastic Stock Recruit Model (SSRM) is poorly described and the reader is uninformed as to model sensitivity or output reality. For example the model balances Tribal with non-Tribal harvest by deducting fish from potential escapement to augment Tribal harvest when post season, Tribal harvest would otherwise receive less than 50%. In practice, management uncertainty has resulted in an approximate 35-65% sharing in recent years between Tribal and Non-Tribal fisheries respectively. There are no in-season management tools to balance the harvest allocation objective at the expense of escapement as represented by SSRM model results. If the SSRM were corrected to adjust for this mis-representation, the long-term effects on Tribal fishing opportunity (average annual catch, proportion of years with min. subsistence catch, proportion of years with commercial opportunity, etc.), already shown to decrease with increasing departure from FMP (see table 4-21), would be further exacerbated.

Further, as observed by Michael Mohr (NOAA technical representative on SAC and STT): “it is reported (section 4.3.2, SSRM Results) that the average natural escapement of the SSRM under the status quo is 72,400 adults, without mentioning that the observed natural escapement over the past 28 years (status quo) has averaged 49,900 adults and has exceeded 72,400 in only 8 of these 28 years. The text and tables should present analogous statistics based on the historical data wherever possible and appropriate (e.g. Table 4-13, 4-24).”

Overall, more time would be required to adequately develop a model that would be representative of the contemporary management framework.

Effects on Sub-stocks. Sub-stocks are critical to preserving the natural productivity of the basin and SSRM indicates a moderate to high level of risk to sub-stocks associated with alternatives as modeled. The EA states at page 18 that the SSRM is not useful for significance testing of probabilities for specific outcomes. However, the model is used to evaluate the potential impacts of de minimis fisheries on select indicator sub-stocks and in the context of critical escapement values. Comparing the status quo probability for falling below the critical value (720 spawners in any year) to that under the 13% cap alternative, it appears that the risk of this event is significant (1.5 times more likely ($=0.33/0.22$)).

Validity of Escapement Floor. Amendment 9 to the FMP allowed that stock productivity would be reviewed in the future and that variable escapements would be ensured through harvest rate management. Prager and Mohr (1999) concluded that for 1979-1993 broods, the extant 35,000 natural escapement floor was an appropriate floor for ensuring fishery stability and long-term yield. Hence, the investigators did not find new compelling information for changing the escapement floor. Indeed, the Salmon Technical Team (2005) examined the relationship between natural adult spawners and recruitment and concluded that Maximum Sustained Yield would be achieved at a parental spawning stock of over 70,000 natural adults. However, A-15 would result in increased probabilities of violating the floor under all alternatives beyond what would be expected under status quo management. Under A-15, the probability that the escapement floor would not be achieved increases from 0.271 under extant FMP to 0.320 under the 13% alternative based on SSRM results. That is, the prospect of clearing the escapement floor in any year becomes 1.2 times less likely ($0.320/0.271$).

Historic harvest sharing agreement compromised. The original harvest sharing agreement called

for a conservation standard expressed as escapement rate with a 35,000 escapement floor to be cleared in all years. Whereas status quo management under FMP would occasionally result in unintended violation of the floor due to forecasting error. A-15 would allow explicit action to violate the floor over and above the probability for doing so under the FMP.

Fall fisheries greatly reduced harvest opportunities in 2006. Tribe expressed concern over the general lack of pre-season impact analyses for fall fisheries. We reiterate our concern today, and strongly urge that a tool be developed for estimating fall fishery impacts during the modeling and analysis phase of spring and summer fisheries of the same calendar year. Fall fisheries which are enabled in a current management year and affect stock abundance in the following year need to either be eliminated, or expressly managed for (with anticipated levels of Klamath impacts). An alternative for Amendment 15 to safeguard against fall fishery effects on future harvest was eliminated from further consideration by PFMC. In so doing, the resource could be impacted doubly by both planned de minimis fishing in one year followed by fall fishing in the fall of the same year.

Economic opportunity. Klamath chinook that have provided for the Hupa People since time immemorial and have contributed to communities coast wide for more than a century. We encourage the PFMC to explore every opportunity to optimize economic opportunities while conserving the Klamath stock to ensure viable and sustainable fisheries in the future.

Restoration. The historic signing of the Trinity River Record of Decision by the Tribe and the Secretary of the Interior was executed in December 2000. Since that time, our efforts have included overcoming legal challenges by competing demands for Trinity River water. In the wake of legal challenges, the process of restoring the Trinity River is proceeding. We have worked on clearing the river channel of obstacles to restored flows, completed construction to the initial suite of restoration sites, and made progress on the Science Framework, needed to steer the adaptive management program.

On the Klamath River, the Council is well aware of the 2002 adult fish kill. This unprecedented event resulted in the devastating loss of over 68,000 adult Klamath fall chinook potential spawners. In the aftermath of this kill, the Tribe worked with co-managers to optimize the success of a reduced 2002 brood and limit the conditions that could result in subsequent adult fish kills. Many are also aware of significant mortality to down-stream salmon migrants related to chronic disease outbreaks in recent years. This concern is paramount in recent studies intended to relate flow management to the proliferation of fish diseases in Klamath River.