



Hoopa Valley Tribal Council

HOOPA VALLEY TRIBE

Regular Meetings on the First and Third Thursday of Each Month

P.O. Box 1348 • HOOPA, CALIFORNIA 95546 • Phone 625-4211 • Fax 625-4594

February 16, 2007



Clifford Lyle Marshall
Chairman

Carlos M. Gutierrez, Secretary
U.S. Department of Commerce
Herbert Clark Hoover Building
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Re: PFMC Fishery Plan Amendment 15 Should Be Rejected

Dear Secretary Gutierrez:

The Hoopa Valley Tribe respectfully requests that you disapprove action taken by the Pacific Fishery Management Council ("PFMC") at its November 2, 2006 meeting because the modified version of the 10% Cap Alternative, adopted by the PFMC as FMP Amendment 15, is invalid on substantive and procedural grounds. The PFMC's selected alternative would allow up to a 10% ocean impact rate on age four Klamath River fall chinook during time periods when natural spawning escapements will fail to achieve the 35,000 escapement floor. While characterized as a "de minimis" fishery, a 10% harvest rate is far more than de minimis and it will abridge the Tribe's federally reserved fishing rights. The Council's action is also procedurally improper because it was adopted in violation of NEPA.

The alternative selected as a management plan amendment was not the subject of an environmental impact statement, and it differs significantly from alternatives examined in the environmental assessment. The selected alternative added six "considerations for decreasing the allowable age-four ocean impact rate" including use of "other considerations as appropriate," as an alleged basis for decision. The effect of such a vague set of considerations was not given the hard look that NEPA requires.

The Secretary reviews fishery plan amendments pursuant to 16 U.S.C. § 1854 to determine whether they are consistent with the National Standards and other applicable law. In this case, the plan amendment violates National Standards with respect to overfishing and the requirement that stocks be managed as a unit throughout their range, and disregards the law requiring allocation of fishing opportunity between non-Indian and Indian fisherman.

[T]he Secretary of Commerce must manage the ocean fishery in a manner consistent "with any other applicable law," 16 U.S.C. § 1854(a)(1)(B) which, as we stated in our November 3, 1993 Order, we construe as including United States obligations to Indian reservations with respect to

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fishing rights. This is also acknowledged in the Fishery Management Plan . . . for the affected area, which requires that any optimum yield for the ocean fishery must take into account the Indian fishery on the Klamath River.

Parravano v. Babbitt, 861 F.Supp. 914, 925 (N.D. Cal. 1994), *aff'd*, 70 F.3d 539 (9th Cir. 1995), *cert. denied*, 518 U.S. 1016 (1996).

In 2006, for the third year in a row, too few fall chinook salmon returned to the Klamath River to meet the escapement threshold set to ensure the health of the fishery in the future. An overfishing review will result. The PFMC's action, which authorizes further incursions into the spawning escapement floor, is absolutely the wrong step to take. Amendment 15 expressly authorizes overfishing at a 10% harvest rate applicable to escapements below the floor of 35,000 adult fall chinook. The proposed *de minimis* fisheries pose an unacceptable risk to sub-basin stocks; the fabric of long-term productive potential for Klamath fall chinook.

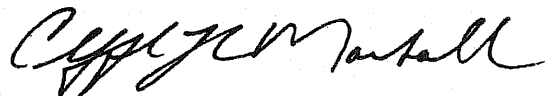
De minimis fisheries would conflict with legislative requirements to improve the Hoopa Valley Tribal fishery and recover natural spawning fish stocks to pre-Trinity River Dam levels (CVPIA P.L. 102-575) and may have significant implications to the fiduciary duty of the federal government to protect and make meaningful our reserved fishing right.

The federal government established the Hoopa Valley Indian Reservation in 1864 pursuant to a statute that required that the Reservation be located as remote from white settlements as may be found practicable. The Reservation is valuable for sustaining the Tribe's culture and livelihood because of access to anadromous fisheries, particularly the Klamath River fall chinook salmon. The United States set aside sufficient resources of these rivers for the Indians to be self-sufficient and maintain a moderate livelihood based on fish. *See* Memorandum from John D. Leshy, Solicitor of the Department of the Interior to the Secretary of the Interior at 3 (Oct. 4, 1993), cited with approval, *Parravano v. Babbitt*, 70 F.3d 539, 542 (9th Cir. 1995), *cert. denied*, 518 U.S. 1016 (1996).

The previous litigation concerning conservation threats to Klamath River fall chinook salmon, and the requirement that harvestable surpluses, if they exist, be equally divided between Indian river fisheries and non-Indian fishery in the ocean and elsewhere, points to the need to rein in the action of the PFMC on Fishery Management Plan Amendment 15.

The Hoopa Valley Tribe respectfully urges you to disapprove the PFMC's action.

Sincerely,



Clifford Lyle Marshall, Chairman
Hoopa Valley Tribe

cc: Conrad C. Lautenbacher, Jr., Undersecretary
William T. Hogarth, Assistant Administrator, NMFS
Rod McInnis, Regional Administrator, NMFS