# 11 REASONABLE AND PRUDENT ALTERNATIVE

## 11.1 OVERVIEW

### 11.1.1 Approach to the RPA

If NMFS finds that a proposed action is likely to jeopardize a listed species or adversely modify its critical habitat, the ESA requires NMFS to suggest those reasonable and prudent alternatives that it believes would enable the project to go forward in compliance with the ESA. By regulation, a RPA is defined as "alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction, that is economically and technologically feasible, and that the [NMFS] Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat" (50 CFR 402.02).

Regulations also require that NMFS discuss its findings and any RPAs with the action agency and utilize the action agency's expertise in formulating the RPA, if requested (50 CFR 402.14(g)(5)). This RPA was developed through a thoughtful and reasoned analysis of the key causes of the jeopardy and adverse modification findings, and a consideration of alternative actions within the legal authority of Reclamation and DWR to alleviate those stressors. NMFS has worked closely with Reclamation and DWR staff and greatly appreciates the expertise contributed by these agencies.

Because this complex action takes place in a highly altered landscape subject to many environmental stresses, it has been difficult to formulate an RPA that is likely to avoid jeopardy to all listed species and meets all regulatory requirements. As detailed in this Opinion, the current status of the affected species is precarious, and future activities and conditions not within the control of Reclamation or DWR are likely to place substantial stress on the species. NMFS initially attempted to devise an RPA for each species and its critical habitat solely by modifying project operations (*e.g.*, timing/magnitude of releases from dams, closure of operable gates and barriers, and reductions in negative flows). In some cases, however, simply altering project operations was not sufficient to ensure that the projects were likely to avoid jeopardizing the species or adversely modifying critical habitat.

Consequently, NMFS developed focused actions designed to compensate for a particular stressor, considering the full range of authorities that Reclamation and DWR may use to implement these actions. These authorities are substantial. The CVPIA, in particular, provides Reclamation with ample authority to provide benefits for fish and wildlife

through measures such as purchasing water to augment in-stream flow, implementing habitat restoration projects, and taking other beneficial actions (Cummins *et al.,* 2008). Some RPA actions, therefore, call for restoring habitat or providing fish passage above dams, even though the water projects are not directly responsible for the impaired habitat or the blocked passage.

NMFS concentrated on actions that have the highest likelihood of alleviating the stressors with the most significant effects on the species, rather than attempting to address every project stressor for each species or every PCE for critical habitat. For example, water temperatures lethal to incubating eggs often occur when the air is warm and flows are low. Fish cannot reach spawning habitat with colder water at higher elevations if it is above currently impassable dams. Accordingly, NMFS' near-term measures provide suitable water temperatures below dams in a higher percentage of years, and long-term measures provide passage to cooler habitat above dams as soon as practicable. Reducing egg mortality from high water temperatures is a critical step in slowing or halting the decline of Central Valley salmonids.

The effects analysis in this Opinion explains that the adverse effects of the proposed action on listed anadromous fish and their critical habitats are both direct and indirect. The USFWS stated in its biological opinion on effects of the projects on Delta smelt that in addition to direct adverse effects such as entrainment at the pumps, the water projects have affected smelt "by creating an altered environment in the Delta that has fostered both the establishment of non-indigenous species and habitat conditions that exacerbate their adverse influence on delta smelt population dynamics." (USFWS 2008a, p. 189) Similarly, NMFS concludes that the water projects have both directly altered the hydrodynamics of the Sacramento-San Joaquin River basins and have interacted with other activities affecting the Delta to create an altered environment that adversely influences salmonid and green sturgeon population dynamics. The altered environment includes changes in habitat formation, species composition, and water quality, among others. Consequently, NMFS must take a broad view of the ways in which the project agencies can improve the ecosystem to ameliorate the effects of their actions.

There are several ways in which water operations adversely affect listed species that are addressed in this RPA. We summarize the most significant here:

1) Water operations result in elevated water temperatures that have lethal and sub-lethal effects on egg incubation and juvenile rearing in the upper Sacramento River. The immediate operational cause is lack of sufficient cold water in storage to allow for cold water releases to reduce downstream temperatures at critical times and meet other project demands. This elevated temperature effect is particularly pronounced in the Upper Sacramento for winter-run and main-stem spring-run, and in the American River for steelhead. The RPA includes a new year-round storage and temperature management program for Shasta Reservoir and the Upper Sacramento River, as well as long-term passage prescriptions at Shasta Dam and re-introduction of winter-run into its native habitat in the McCloud and/or Upper Sacramento rivers.

2) In Clear Creek, recent project operations have led to increased abundance of Clear Creek spring-run, which is an essential population for the short-term and long-term survival of the species. Nonetheless, in the proposed action, continuation of these operations is uncertain. The RPA ensures that essential flows and temperatures for holding, egg incubation and juvenile survival will be maintained.

3) Red Bluff Diversion Dam (RBDD) on the Sacramento River impedes both upstream migration of adult fish to spawning habitat and downstream migration of juveniles. Effects are significant for winter-run and spring-run, but are particularly pronounced for green sturgeon and its proposed critical habitat in that a significant portion of the population is blocked from its spawning and holding habitat. The RPA mandates gate openings at critical times in the short term while an alternative pumping plant is built, and, by 2012, opening of the gates all year.

4) Both project and non-project effects have led to a significant reduction in necessary juvenile rearing habitat in the Sacramento River Basin and Delta. The project's flood control operations result in adverse effects through reduced frequency and magnitude of inundation of rearing habitat. To minimize these effects, the RPA contains both short-term and long-term actions for improving juvenile rearing habitat in the Lower Sacramento River and northern Delta.

5) Another major effect of water operations is diversion of out-migrating juveniles from the north Delta tributaries into the interior Delta through the open DCC gates. Instead of migrating directly to the outer estuary and then to sea, these juveniles are caught in the interior Delta and subjected to pollution, predators, and altered food webs that cause either direct mortality or impaired growth. The RPA mandates additional gate closures to minimize these adverse effects to winter-run, spring-run, and steelhead.

6) Similarly, water pumping causes reverse flows, leading to loss of juveniles migrating out from the Sacramento River system in the interior Delta and more juveniles being exposed to the State and Federal pumps, where they are salvaged at the facilities. The RPA prescribes Old and Middle River flow levels to reduce the number of juveniles exposed to the export facilities and prescribes additional measures at the facilities themselves to increase survival of fish.

7) The effects analysis shows that juvenile steelhead migrating out from the San Joaquin River Basin have a particularly high rate of loss due to both project and non-project related stressors. The RPA mandates additional measures to improve survival of San Joaquin steelhead smolts, including both increased San Joaquin River flows and export curtailments. Given the uncertainty of the relationship between flow and exports, the RPA also prescribes a significant new study of acoustic tagged fish in the San Joaquin Basin to evaluate the effectiveness of the RPA and refine it over the lifetime of the project.

8) On the American River, project-related effects on steelhead are pronounced due to the inability to consistently provide suitable temperatures for various life stages and flow-related effects caused by operations. The RPA prescribes a flow management standard, a temperature management plan, additional technological fixes to temperature control structures, and, in the long term, a passage at Nimbus and Folsom Dams to restore steelhead to native habitat.

9) On the Stanislaus River, project operations have led to significant degradation of floodplain and rearing habitat for steelhead. Low flows also distort cues associated with out-migration. The RPA proposes a year-round flow regime necessary to minimize project effects to each life-stage of steelhead, including new spring flows that will support rearing habitat formation and inundation, and will create pulses that cue out-migration.

10) Nimbus Fish Hatchery steelhead program contribute to both loss of genetic diversity and mixing of wild and hatchery stocks of steelhead, which reduces the viability of wild stocks. The Nimbus and Trinity River Hatchery programs for non-listed Fall-run Chinook also contribute to a loss of genetic diversity, and therefore, viability, for Fall-run. The RPA requires development of Hatchery Genetics Management Plans to improve genetic diversity of both steelhead and fall-run Chinook, an essential prey base of Southern Resident Killer Whale.

This RPA is composed of numerous elements for each of the various project divisions and associated stressors and must be implemented in its entirety in order to avoid jeopardy and adverse modification. There are several actions that allow the project agencies options for alleviating a particular stressor. Reclamation and DWR may select the option they deem most practical — NMFS cares only that the stressor be sufficiently reduced. There are several actions in which NMFS expressly solicits additional research and suggestions from the project agencies for alternative actions to achieve needed results.

NMFS recognizes that the RPA must be an alternative that is likely to avoid jeopardizing listed species or adversely modifying their critical habitats, rather than a plan that will achieve recovery. Both the jeopardy and adverse modification standards, however, include consideration of effects on an action on listed species' chances of recovery. NMFS believes that the RPA does not reduce the likelihood of recovery for any of the listed species. The RPA cannot and does not, however, include all steps that would be necessary to achieve recovery. NMFS is mindful of potential social and economic consequences of reducing water deliveries and has carefully avoided prescribing measures that are not necessary to meet section 7 requirements.

An RPA must avoid jeopardy to listed species in the short term, as well as the long term. Essential short-term actions are presented for each division and are summarized for each species to ensure that the likelihood of survival and recovery is not appreciably reduced in the short term (*i.e.*, one to five years). In addition, because the proposed action is operation of the CVP/SWP until 2030, this consultation also includes long-term actions

that are necessary to address project-related adverse effects on the likelihood of survival and recovery of the species over the next two decades.

Some of these long-term actions will require evaluation, planning, permitting, and funding. These include:

1) Providing fish passage at Shasta, Nimbus, and Folsom Dams, which ultimately is the only means of counteracting the loss of habitat needed for egg incubation and emergence, and steelhead over-summering habitat at lower elevations. This habitat loss has already occurred and will be exacerbated by climate change and increased water demands.

2) Providing adequate rearing habitat on the lower Sacramento River and Yolo Bypass through alteration of operations, weirs, and restoration projects.

3) Engineering projects to further reduce hydrologic effects and indirect loss of juveniles in the interior Delta.

4) Technological modifications to improve temperature management in Folsom Reservoir.

NMFS considered economic and technological feasibility in several ways when developing initial actions in this RPA. The RPA also allows for tailored implementation of many actions in consideration of economic and technological feasibility without compromising the RPA's effectiveness in avoiding jeopardy and adverse modification of critical habitat. Examples include:

1) Providing reasonable time to develop technologically feasible alternatives where none are "ready to go" – *e.g.*, the Delta engineering action (Action IV.1.3), and lower Sacramento River rearing habitat action (Action I.6.1).

2) Calling for a stepped approach to fish passage at dams, including studies and pilot projects, prior to a significant commitment of resources to build a ladder or invest in a permanent trap and haul program.

3) Providing a health and safety exception for export curtailments.

4) Using monitoring for species presence to initiate actions when most needed.

NMFS examined water supply costs of the RPA as one aspect of considering economic feasibility. While only costs to the action agency are considered in determining whether a RPA meets the regulatory requirement of economic feasibility, NMFS is mindful of potential social and economic costs to the people and communities that historically have depended on the Delta for their water supply. Any water supply impact is undesirable. NMFS made many attempts through the iterative consultation process to avoid

developing RPA actions that would result in high water costs, while still providing for the survival and recovery of listed species.

NMFS estimates the water costs associated with the RPA to be 5-7% of average annual combined exports: 5% for CVP, or 130 TAF/year, and 7% for SWP, or 200 TAF/year[1]. The combined estimated annual average export curtailment is 330 TAF/year. These estimates are over and above export curtailments associated with the FWS Smelt Opinion. The Old and Middle River flow restrictions in both Opinions tend to result in export curtailments of similar quantities at similar times of year. Therefore, in general, these 330 TAF export curtailments are associated with the NMFS San Joaquin River Ratio actions in the RPA. These water costs can be offset by application of CVPIA (b)(2) water resources, water conservation, groundwater use, water recycling and other processes currently underway.

The RPA includes collaborative research to enhance scientific understanding of the species and ecosystems, and to adapt actions to new scientific knowledge. This adaptive structure is important, given the long-term nature of the consultation and the scientific uncertainty inherent in a highly variable system. Monitoring and adaptive management are both built into many of the individual actions and are the subject of an annual program review. NMFS views both the CALFED Science Program and the NMFS Southwest Fisheries Science Center as essential partners in ensuring that the best scientific experts are brought together to assess the implementation and effectiveness of actions in this RPA. We will continue to pursue many of the long-term recommendations for improving science as recommended by the CALFED and CIE peer reviews, and we will seek to incorporate this new science as it becomes available through the adaptive management processes embedded in the RPA.

Finally, we note that the project agencies are currently developing and evaluating a plan to construct a diversion on the Sacramento River and a canal around the Delta, in the BDCP planning effort. Such a reconfiguration of the water conveyance system would take careful planning to avoid jeopardizing Sacramento River and north Delta species, as well as several years of environmental review and permitting, and would trigger a re-initiation of this Opinion. We expect that the collaborative research that is part of this RPA will inform this planning effort as it proceeds.

[1] The proportional share between the CVP and SWP is attributable to CalLite programming and may not represent the true share of export reductions that would be allocated to each facility under actual conditions.